

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)
) Case No. 2:14-cr-357-APG-VCF
Plaintiff,)
) Las Vegas, Nevada
vs.) Thursday, April 28, 2016
) Courtroom 6C, 9:19 a.m.
BRIAN WRIGHT,)
) MOTION HEARING
Defendant.)
) C E R T I F I E D C O P Y

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE: THE HONORABLE ANDREW P. GORDON,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

See next page

COURT REPORTER:

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United States District Court
333 Las Vegas Boulevard South, Room 1334
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Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

1 APPEARANCES:

2 For the Plaintiff:

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7 For the Defendant Brian Wright:

8 BRIAN WRIGHT
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14 Also present:

15 Josh Mahan
16 Special Agent, FBI
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1 LAS VEGAS, NEVADA; THURSDAY, APRIL 28, 2016; 9:19 A.M.

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3 P R O C E E D I N G S

4

5 COURTROOM ADMINISTRATOR: All rise.

6 THE COURT: Thank you. Please be seated.

7 COURTROOM ADMINISTRATOR: United States vs.

8 Brian Wright, 2:14-cr-357-APG-VCF. This is the time set for
9 Motion Hearing.

10 Counsel, please note your appearances.

11 MS. FRAYN: Good morning, Your Honor.

12 Kimberly Frayn, Gregory Damm, and Crane Pomerantz for the
13 United States. Also seated at counsel table is Special Agent
14 Josh Mahan.

15 THE COURT: Good morning to all four of you.

16 MR. POMERANTZ: Good morning, Your Honor.

17 MR. DAMM: Good morning.

18 MR. MANINGO: Good morning, Your Honor.

19 Lance Maningo, standby counsel to Mr. Wright. Mr. Wright's
20 also present.

21 THE COURT: Good morning to both of you.

22 PRO SE WRIGHT: Good morning, Your Honor.

23 THE COURT: Before I get into the Motions in Limine,
24 Mr. Maningo, when, on Tuesday, did you hear from the United
25 States Government about the charges that they were intending to

1 proceed on?

2 MR. MANINGO: Um . . . boy, Your Honor, I don't know
3 that I was fully prepared for that question right this minute.

4 THE COURT: Okay.

5 MR. MANINGO: I received things just over the -- over
6 the Internet pursuant to the filings, but I did also receive, I
7 believe, an e-mail chain from both Ms. Frayn and Mr. Damm. I
8 would respectfully yield to the -- to the Government for their
9 representations on when they were provided.

10 THE COURT: I have a file stamp showing that the
11 Motion to Dismiss Count Five was filed at 2:20 p.m. on Tuesday.
12 Did you get a call before then as to that -- what was going to
13 happen? Do you recall?

14 MR. MANINGO: I had communications with them
15 throughout -- throughout the day by e-mail and --

16 THE COURT: Okay.

17 MR. MANINGO: -- I could look, Your Honor --

18 THE COURT: That's okay.

19 MR. MANINGO: -- if you'll allow me. I don't know
20 offhand if I -- if we spoke specifically about that motion or
21 not.

22 THE COURT: Ms. Frayn --

23 MR. MANINGO: But my records show the same,
24 Your Honor, that I received the filing at the same time that
25 you just indicated.

1 THE COURT: Okay.

2 Ms. Frayn, when did you communicate to Mr. Maningo
3 that you were going to go forward dropping Count Five?

4 MS. FRAYN: Your Honor, the -- there was a perceived
5 inconsistency in the minute orders. The initial order said
6 that the Government would have two days to make those
7 decisions. Mr. Schiess is the only one that had the authority
8 to make that decision. When it became -- when it was brought
9 to my attention, I became aware that there was this
10 inconsistency, I tried to get Mr. Schiess to authorize what I
11 had proposed to him. He was unavailable until 2:15 and so as
12 soon as he became available to me, I filed it. So I could not
13 convey to Mr. Maningo as the Court had desired of me because I
14 couldn't -- I couldn't until Mr. Schiess authorized the
15 dismissal.

16 THE COURT: Understood. And I saw some e-mails to
17 that effect.

18 MS. FRAYN: And then, so the initial -- the initial
19 notification then would not have been as Your Honor would have
20 contemplated, which is me talking to Mr. Maningo and then
21 filing something. It actually was the reverse.

22 THE COURT: Okay.

23 MS. FRAYN: The Pacer got filed and then we all kind
24 of confirmed that he had actually seen it and received it
25 and --

1 THE COURT: Okay. So, you didn't call him ahead of
2 time and say, "Here's the problem. Here's what we've got"?

3 MS. FRAYN: No, sir, because that happened in a very
4 short period of time that we became aware there was a conflict
5 and we were missing the 1 o'clock deadline and so . . .

6 THE COURT: Okay.

7 MS. FRAYN: We filed it so that we would stop the
8 clock and shorten the time and then we followed up with him.

9 THE COURT: Appreciate that. Okay.

10 Mr. Maningo, you were going to say something.

11 MS. FRAYN: And -- and -- and, Your Honor, I know
12 that we did that sort of before 3:00 because we were over here
13 with you at 3:00.

14 We followed up with --

15 THE COURT: I lost you. I'm sorry.

16 MS. FRAYN: So, we filed the motion at 2:00
17 something, I believe, and --

18 THE COURT: 2:20.

19 MS. FRAYN: I believe that I followed up -- I don't
20 know, I shouldn't maybe make that representation. I believe
21 that I followed up with him before I came to the hearing but it
22 might have been after.

23 THE COURT: Okay.

24 Mr. Maningo.

25 MR. MANINGO: I believe that's all -- that's all

1 correct. With specific reference to the dismissal of Count
2 Five the first notice of -- I'm looking at my notes now, that I
3 received was the 2 o'clock, somewhere around there, filing.

4 THE COURT: All right. Just so I'm clear because I'm
5 trying to piece it together. There was some e-mail between my
6 chambers and Ms. Frayn seeking to find out what was going on.
7 Ms. Frayn sent an e-mail at 1:48 to my staff as well as
8 Mr. Damm and Ms. Silva and Mr. Pomerantz at 1:48 saying,
9 "Here's the problem. Mr. Schiess is unavailable until 2:15,
10 he's got to authorize this. As soon as we get information,
11 I'll let them know. I will immediately (right now) advise
12 Mr. Maningo of this lapse as well." That's at 1:48.
13 Apparently that didn't happen.

14 MS. FRAYN: I'm sorry, I don't remember if I
15 forwarded that e-mail to him or not, as I stand here.

16 THE COURT: Okay.

17 MS. FRAYN: I'm sure that was my intention when I
18 wrote that to your chambers.

19 THE COURT: Okay. At 2:20 the Motion to Dismiss
20 Count Five is filed. At 2:29 there's an e-mail from Ms. Frayn
21 to my staff, as well as Mr. Maningo at that point, and Mr. Damm
22 and Mr. Pomerantz explaining that this management -- apparently
23 management at the U.S. Attorney's Office read the part of the
24 order that said the Government had two days -- "two days to
25 streamline the Indictment and dismiss some counts and promptly

1 notify defendants of the change" and so did not immediately
2 respond to my -- which, Ms. Frayn's request -- last night for
3 authorization to dismiss or modify the Indictment and she
4 apologizes to Mr. Maningo.

5 Now the order doesn't say you have two days. The
6 minutes of the proceedings say, "Ms. Frayn requests the Court
7 not dismiss this matter and that the Court allow the Government
8 two days to streamline the Indictment and dismiss some counts
9 and promptly notify defendants of the changes." That was
10 Ms. Frayn's request. I denied that. Mr. Schiess was here,
11 Mr. Pomerantz was here when I denied that and I said we're
12 going to go on Friday.

13 At the bottom of those minutes, on Page 2, and
14 perhaps that's where whoever management is at the U.S.
15 Attorney's Office didn't look, it said, "Ms. Frayn is
16 instructed to advise Mr. Maningo of the charges the Government
17 plans to move forward on by tomorrow at 1 o'clock p.m." I
18 couldn't have been more clear and I distinctly remember saying
19 it has to be followed up with written confirmation so we don't
20 have this potential telephone idea that she says something to
21 him who says something to him and then all of a sudden what he
22 hears is different than what's originally said. And so at
23 least there's confirmation, I've got written confirmation that
24 it was done and sent over at 2:20. But it boggles my mind how
25 anybody could have misinterpreted what was going on.

1 Ms. Frayn, I take from your e-mails you realized that
2 because you say "I will immediately (right now)" and you point
3 out there was some miscommunication or something and that you
4 requested authorization the night before to dismiss and
5 apparently you had to wait for Mr. Schiess to grant that.
6 Okay. I would have expected somebody to let Mr. Maningo know,
7 "Hey, we're waiting. We need authorization, but at least
8 here's what we're thinking."

9 The definition of exasperate is irritated or annoyed
10 to the point of injudicious action. I'm trying not to be
11 injudicious, but I have been exasperated for the last three
12 days and when this occurred on Tuesday, it just made it further
13 problematic.

14 Now, the Government has moved for more time last
15 night. Did you give a copy of that to Mr. Wright?

16 MR. MANINGO: I did this morning, Your Honor.

17 THE COURT: Okay. So, Mr. Wright, you're aware that
18 last night the Government filed a motion for more time?

19 PRO SE WRIGHT: Yes, Your Honor. I just received it
20 this morning.

21 THE COURT: Okay. I saw it late last night.

22 Contrary to what the U.S. Attorney's Office may be
23 thinking, this is not about punishing the U.S. Attorney's
24 Office. This is not about sanctions. This is not about
25 punishing anybody. This is about affording Mr. Wright his fair

1 opportunity to defend himself.

2 Your motion asks for a favor and you've done nothing
3 to earn that favor. If anything, you've done the opposite of
4 that.

5 Mr. Maningo, once you found out at 2:20 on the -- on
6 the filing as to what charges were going forward, were you able
7 to convey that to Mr. Wright at what time, do you recall?

8 MR. MANINGO: Thank you, Your Honor. Yes.

9 And just to be fair and accurate on the record. I
10 did --

11 THE COURT: Please.

12 MR. MANINGO: -- receive an e-mail from Ms. Frayn at
13 1 -- my -- my records show 1:49.

14 THE COURT: Okay. Just -- and what did that e-mail
15 tell you?

16 MR. MANINGO: It -- it said that they were working to
17 rectify as soon as possible.

18 THE COURT: Okay. All right. So, that helps.

19 MR. MANINGO: And I think it referenced the
20 authority --

21 THE COURT: Yeah.

22 MR. MANINGO: -- that that was needed by Ms. Frayn.

23 THE COURT: But they didn't tell you at that point
24 what charges were going forward?

25 MR. MANINGO: I don't believe so.

1 THE COURT: Okay. So when you found out at 2:20, how
2 were you able to communicate to Mr. Wright?

3 MR. MANINGO: I was in communications with -- with
4 all three U.S. attorneys during the afternoon yesterday and I
5 had had calls with Brian the day before, but I don't think we
6 knew exactly -- I wasn't able to make contact with him so, the
7 soonest I can absolutely state to the Court that I talked to
8 him about the count being dropped would be yesterday afternoon,
9 unless -- do you recall us talking about that before that?

10 PRO SE WRIGHT: Yesterday afternoon, Your Honor.

11 MR. MANINGO: And that's just -- that's just a matter
12 of, Your Honor, I wasn't able to drive to Pahrump and back and
13 so we were working through what we can to fax "Emergency call
14 needed. Please have Mr. Wright call my office." And sometimes
15 that happens and sometimes we're not able to get communication
16 as soon as we'd like.

17 THE COURT: Do you believe if you had got the
18 information at 1 o'clock, as opposed to 2:20, that situation
19 would have changed at all?

20 MR. MANINGO: I don't know. I mean, in terms of
21 my --

22 THE COURT: Ability to contact Mr. Wright.

23 MR. MANINGO: I can't say -- say it, Your Honor. I
24 think we were trying to communicate with him on all issues.
25 Whether it be the Motions in Limine, all of that at the same

1 time and it was just -- communications is sometimes tough.

2 THE COURT: I can appreciate that.

3 MR. MANINGO: So I can't really say.

4 THE COURT: I appreciate that. Thank you,
5 Mr. Maningo.

6 Well, the Government cost Mr. Wright at least another
7 hour and a half beyond the 1 o'clock deadline that I imposed.
8 It appears to me that could have been avoidable if Ms. Frayn
9 had been authorized to make the decision and that the only
10 reason that decision was delayed was because Mr. Schiess had to
11 make that authorization and he wasn't available until 2:15.
12 Despite everything that happened the day before, I would have
13 expected the U.S. Attorney's Office to not violate another of
14 my orders and to have some mechanisms in place so that you
15 could comply, if not overcomply.

16 So because you cost Mr. Wright another hour and a
17 half I'm going to take that off the Government's time and not
18 Mr. Wright's. And so we're going to end on Friday at 3:30
19 instead of 5 o'clock. Because that's not fair to Mr. Wright
20 that you get that extra time to prepare.

21 I'm not even yet going to get into the fact that
22 there was another witness list filed yesterday adding a
23 witness. We will get into the issue in a few minutes about the
24 fact that another exhibit list that was filed yesterday added
25 exhibits to the day before, and added an exhibit that was never

1 even on the original exhibit list.

2 I had to look up how to spell exasperated this
3 morning.

4 MR. MANINGO: Your Honor . . .

5 THE COURT: Yes, Mr. Maningo.

6 MR. MANINGO: I'm sorry. I don't mean to interrupt.
7 May I make a record?

8 THE COURT: Yes. Please. Go ahead.

9 MR. MANINGO: But Mr. Wright, I know I'm just standby
10 counsel, he's asked me to make a record on his behalf --

11 THE COURT: Okay. Please.

12 MR. MANINGO: -- if I could.

13 I think you touched on some of the points that
14 Mr. Wright has asked me to note, which is the exhibit list last
15 night, the witness list adding Ms. Perreira as a witness.
16 Also, and I haven't had the opportunity to review it but I just
17 provided it to my client but I believe there was additional
18 discovery provided on the 26th.

19 THE COURT: Monday -- Tuesday.

20 MR. MANINGO: On Tuesday.

21 THE COURT: Fabulous.

22 MR. MANINGO: And Mr. Wright appreciates where the
23 Court's -- where the Court's going on this but has asked me to
24 renew the Motion to Dismiss and just to emphasize how he's not
25 seeking punishment to the Government necessarily but, thinks

1 he's incredibly handicapped in his ability to defend himself in
2 this case and has wanted me to, like I said, Your Honor, renew
3 his Motion to Dismiss as he sees that as the only remedy that
4 could possibly cure this.

5 THE COURT: I appreciate that.

6 MR. MANINGO: Thank you.

7 THE COURT: I will give that some consideration
8 actually.

9 MS. FRAYN: Your Honor, if I may speak to the
10 discovery issue.

11 THE COURT: Please.

12 MS. FRAYN: I had advised the Court and the defendant
13 on the record my intent to push those transcripts out for his
14 convenience, noting that they had probably already been in the
15 public record for the Suppression Hearing.

16 THE COURT: And that's what I was going to ask. What
17 exactly is the new discovery?

18 MS. FRAYN: The bulk of what was pushed out was just
19 that.

20 THE COURT: And just so I've got a clear record.
21 You're talking about the transcripts from the discovery hearing
22 on the Motion to Suppress?

23 MS. FRAYN: I'm talking -- yes. I am talking about
24 Detective Condratovich and Luszczuk -- I may have said that
25 completely wrong -- who testified before Magistrate Judge

1 Ferenbach in conjunction with Ms. Perreira's suppression.

2 THE COURT: Okay.

3 MS. FRAYN: I had noted before for the Court that it
4 was probably in the public record because we litigated so much
5 and the transcripts were prepared.

6 THE COURT: Um-hmm.

7 MS. FRAYN: But that I was pushing them out because
8 we anticipated Detective Condratovich testifying at that point.

9 THE COURT: And so that was what was the new stuff
10 that was produced?

11 MS. FRAYN: That was the bulk of it.

12 THE COURT: Okay.

13 MS. FRAYN: The night before that discovery was
14 produced, Detective Aguiar sent me an e-mail and said, "These
15 items" -- 18 pages -- "had been separated from my main case
16 file and I just came across them. I apologize. Here they
17 are." They were 18 pages, consisting of some Sin City records
18 and some telephone log for April of 2014 and then for -- one or
19 two pages of an undated for Mr. Cole's phone. So that's the --
20 that's the -- that's the new information that was provided to
21 me the night before and I provided it the next morning. But
22 the bulk of what it was were the pages of those transcripts,
23 sir.

24 THE COURT: And so you got that from Detective Aguiar
25 on Monday night and then you produced it on Tuesday morning?

1 MS. FRAYN: Yes, sir.

2 THE COURT: I appreciate you turning that around so
3 quickly.

4 Is any of that new material exculpatory of
5 Mr. Wright?

6 MS. FRAYN: Not that I am aware of, sir. I don't
7 know how -- I don't know his theory of defense so I don't know
8 how Cole's phone logs play into that theory but, not -- not
9 from the Government's perspective.

10 THE COURT: Okay. And the intent -- I presume the
11 Government doesn't intend to use that information at trial.

12 MS. FRAYN: No, sir.

13 THE COURT: Okay.

14 MS. FRAYN: Just fulfilling our ongoing obligation.

15 THE COURT: I appreciate that.

16 And believe me, I don't fault the U.S. Attorney's
17 Office for that at this stage because apparently you got that
18 late from the Metro or Henderson PD detective.

19 Well, Mr. Wright has moved to dismiss based upon this
20 additional violation of my order and putting him in a worse
21 spot. You want to respond to that, please.

22 (Brief pause in proceedings.)

23 MR. POMERANTZ: Your Honor, may I respond to that?

24 THE COURT: Yeah. Sure.

25 MR. POMERANTZ: And, Your Honor, as the Court knows,

1 I filed a notice of appearance.

2 THE COURT: Yes.

3 MR. POMERANTZ: I don't take that for granted. I'm
4 seeking the Court's permission to --

5 THE COURT: No, it's granted. No worries.

6 MR. POMERANTZ: -- to appear. Thank you, Your Honor.

7 Your Honor, as the Court knows, dismissal of an
8 Indictment is a significantly severe action in this case. The
9 United States is not proud of what's gone on in this case. The
10 Court's critique, the Court's exasperation, the Court's
11 frustration is in my opinion completely and utterly justified.
12 There are things we need to do better and there are things we
13 do -- we will do better. What we're talking about though,
14 Your Honor, is the Court, in an effort to vindicate
15 Mr. Wright's rights, imposed upon the Government the
16 responsibility of presenting its case in a day -- now, by
17 3:30 -- and we take the Court to heart and we will do what the
18 Court says.

19 I -- I think what we're talking about, however, is
20 what additional prejudice befell Mr. Wright as a result of that
21 hour and a half. And the United States sincerely appreciates
22 Mr. Maningo's candor and he has been a gentleman -- I just want
23 to put on the record what a gentleman he's been. Hasn't been a
24 pushover. He's been fighting for his client hard, but in a
25 courteous, professional way. What Mr. Maningo says is as a

1 result of difficulties in getting in touch with an incarcerated
2 defendant, that he can't say to the Court that he would have
3 gotten this information to Mr. Wright, that Mr. Wright would
4 have acted upon this information any faster. So what I would
5 submit to the Court is while your exasperation is completely
6 founded, completely justified, what we don't have is any
7 additional prejudice to the defendant as a result of this hour
8 and 20 minutes, given the difference between 1:00 and 2:20 when
9 the notification should -- should have come.

10 So, on that ground, Your Honor, not excusing what
11 happened, not condoning what happened, the United States
12 Attorney's Office has to earn back your trust and we will do
13 that but, I would submit to the Court that under these
14 circumstances, there hasn't been the type of prejudice to the
15 defendant as a result of this hour and a half lapse, or hour
16 and 20 minute lapse.

17 THE COURT: Mr. Wright, you want to respond to that?

18 MR. MANINGO: The Court's indulgence, Your Honor.

19 THE COURT: Sure.

20 (Discussion at defense table.)

21 MR. MANINGO: Your Honor, in speaking to Mr. -- and I
22 appreciate the representations from the Government. In
23 speaking to Mr. Wright, he advises me that where he is housed
24 in -- in Pahrump, the law library closes at 3:00 . . .

25 PRO SE WRIGHT: 30.

1 MR. MANINGO: 3:30. If a notice would have been --
2 whether it be in the morning -- I know the deadline was
3 1 o'clock, but -- and Mr. Wright and I recall the Court saying
4 earlier, if possible, or something to that effect, but the
5 deadline was the deadline. Had it been earlier, he would have
6 had the opportunity to research and prepare in the law library
7 that night. So with respect to detriment to my client, he
8 feels that had everything been done timely, he would have had
9 access to a law library for an entire day that he lost.

10 MR. POMERANTZ: Your Honor, if I may.

11 As to that point, again, I -- I don't question
12 Mr. Maningo's representation, Mr. Wright's representation for a
13 minute. I don't think we're talking about access to the law
14 library though --

15 THE COURT: No, I -- I -- I --

16 MR. POMERANTZ: -- we're talking about the
17 notification to Mr. Wright in getting that information. Even
18 if it all happened promptly, the law library closes at 3:00 or
19 3:30 and more to the point, I would suggest -- and I'm not
20 being flip with the Court or the defendant -- we were talking
21 about dismissal of a count. I'm not sure what there was to
22 research. We were talking about getting rid of Count Five.

23 THE COURT: No, I appreciate that and . . . I was
24 concerned about this when I set this plan in place Monday
25 evening -- afternoon, that 3:00 -- that the 1 o'clock deadline

1 was going to be close because I know it's difficult getting
2 messages out to Pahrump and getting phones set up and whatever
3 else needs to be done out there, but I felt like that was about
4 the earliest that was reasonable for the Government to be able
5 to make a decision, figure out what witnesses and exhibits it
6 were going to use, and then give him the information so that he
7 could prepare and . . . fully fearing that we were going to
8 have some communications problems.

9 It is what it is and, again, my attempt is to uphold
10 Mr. Wright's rights as much I can, but dismissal is an extreme
11 sanction. No doubt about it. And I, at this stage, don't feel
12 like it's gotten to the level to grant dismissal. But my ears
13 are open and my eyes will be open and if . . . if there is
14 further prejudice to Mr. Wright's ability to defend himself,
15 dismissal becomes all that much more possible, if not likely.
16 But at this stage I'm not going to dismiss. I'm going to say
17 that the Government will finish at 3:30 on Friday. They've
18 cost Mr. Wright at least an hour and a half beyond my order and
19 he shouldn't suffer for that. So we will start at 9:00. The
20 Government will finish by 3:30. I'm sensitive to the issue
21 raised in the motion for more time and I was going to address
22 that with the parties today anyhow.

23 Mr. Wright, not to suggest you're going to do this
24 but I want to make sure you understand. If -- if you do what
25 the Government is fearful of, that you attempt to stall or go

1 into the four corners defense, whatever you -- you know, take a
2 two hour opening and drag the cross-exams out, I will give the
3 Government more time. But I'm going to give you the
4 opportunity to conduct a reasonable opening statement and
5 conduct a reasonable cross-examination of whatever witnesses
6 they put on, as what I would expect of a lawyer if you were a
7 lawyer as opposed to representing yourself. If you were a
8 lawyer, or if Mr. Maningo were representing you and he tried to
9 stall it out, I would call him on the carpet for that and I
10 would add time to the Government's time. I don't want to have
11 to get into the point where I have a chess clock going back and
12 forth but I may if it gets to that point. But I will certainly
13 be sympathetic to a Government request for additional time if
14 the defense unnecessarily drags out the time period that we're
15 operating under. I am sensitive to that and I will watch that.
16 I'm not suggesting you're going to, I just want to make sure
17 that the word is clear. And we'll talk a little bit about
18 timing in a few minutes.

19 Let's move next to the Motions in Limine. And I
20 guess right now the only Motion in Limine still pending is the
21 404(b) motion.

22 Has the Government reduced in any way what -- now
23 that there's a shortened time frame, what it intends to offer
24 into evidence or what it intends to try to offer into evidence
25 that would maybe affect this motion? Do you still intend to

1 try and get all this testimony in I guess is the question.

2 Mr. Damm.

3 MR. DAMM: Yes. Good morning, Your Honor.

4 THE COURT: Good morning.

5 MR. DAMM: Gregg Damm on behalf of the United States.

6 The motion was brought to this Court's attention to
7 advise the Court prior to trial and prior to the testimony of
8 Mr. Cole of various statements that we anticipate he may make
9 regarding his interaction with Mr. Wright. I don't believe
10 that the items that we've identified in the motion are covered
11 by 404(b). I believe that they are facts that encompass the
12 res gestae of the criminal activity and are inextricably
13 intertwined.

14 THE COURT: Despite the fact that the title says
15 "Motion in Limine to Allow Certain Testimony Pursuant to
16 Federal Rule of Evidence 404(b)."

17 MR. DAMM: Your Honor, if you read the body of the
18 motion --

19 THE COURT: I have. And it seems to focus on
20 inextricable or intrinsic evidence which is inextricably
21 intertwined. There is mention of 404(b). So you're not moving
22 under 404(b). I think that's wise because it's late and
23 there's no notice. So let's talk about inextricably
24 intertwined. Is there any of these seven -- actually I guess
25 there's eight because there's two Number 2s -- are there any of

1 these eight categories that you no longer need so that I don't
2 have to rule on them?

3 MR. DAMM: Your Honor, it's not so much that we need
4 them.

5 THE COURT: Intend to offer them into trial.

6 MR. DAMM: But -- and I don't necessarily intend to
7 offer them. My concern is that in questioning Mr. Cole, I
8 don't exactly know which of these items he may respond to --
9 I -- well, let me put it this way. I don't expect generally to
10 ask him about all of these categories. I -- I'm interested
11 in -- in the robberies.

12 THE COURT: Let me summarize. You haven't prepped
13 him until the last minute. You're not exactly sure what he's
14 going to say on the stand. You're concerned that these areas
15 might come up. You're previewing them for me, which I
16 appreciate. So, if you'd have done this timely, it would have
17 been filed at least 30 days ago. We could have had an
18 out-of-court hearing outside the presence of the jury to
19 determine and figure out exactly what is or is not coming into
20 evidence. We're passed that. We can't do it. Fine. Okay.
21 It's potentially intrinsic evidence. If that's the case,
22 404(b) doesn't apply. I agree with you. So the question
23 becomes, now we're looking to see -- we need to warn Mr. Cole
24 not to go into these areas. Am I right?

25 MR. DAMM: Right.

1 THE COURT: Okay. Perfect. I get it now.

2 (Brief pause in proceedings.)

3 Okay. So the issue is we need to make sure he
4 doesn't touch on some of these issues; what are the issues
5 we're going to exclude.

6 MR. DAMM: Well, no.

7 THE COURT: Okay.

8 MR. DAMM: I don't think that's really the issue. I
9 think the -- from my standpoint, this is all fair game.

10 THE COURT: I understand. I don't. I disagree, but
11 that's what we're going to try and narrow down now.

12 MR. DAMM: Okay.

13 THE COURT: All right. So -- so, bottom line, the
14 answer to my question is, everything in this is still what the
15 Government wants to move on; you haven't withdrawn some of this
16 because you now have shortened time?

17 MR. DAMM: No, I -- I'm not suggesting that we're
18 necessarily going to get into all of these areas.

19 THE COURT: Okay.

20 MR. DAMM: But, if I ask Mr. Cole a question about
21 . . . something he may have done before one of the robberies
22 and he says, "Well, we were -- we were out smoking dope
23 together," then . . .

24 THE COURT: Okay. Let me ask you. Is smoking dope
25 intrinsic evidence? Is it inextricably intertwined with these

1 charges?

2 MR. DAMM: Absolutely.

3 THE COURT: So, I ruled, you realize, back in
4 October, that the text messages about smoking marijuana
5 couldn't come in because, in fact, the Government admitted at
6 that hearing they weren't going to offer that into evidence.
7 Has that position now changed?

8 MR. DAMM: With respect to Mr. Cole and his testimony
9 and the reason, in part, that he committed these acts was due
10 to the fact that -- that he and Mr. Wright, at Mr. Wright's
11 encouragement, was using drugs. Not only marijuana but, but
12 others as well. So, to --

13 THE COURT: How is -- okay. Okay. Fair question.
14 So fair response to me. How is the smoking of marijuana
15 intrinsically intertwined with the charges in the case?

16 MR. DAMM: Is it?

17 THE COURT: That's what I'm asking you. How do you
18 think it's inextricably intertwined?

19 MR. DAMM: Because it's one of the methods that
20 Mr. Wright used to lower inhibitions of Mr. Cole to induce him
21 to commit an act that he otherwise wouldn't have been inclined
22 to commit.

23 THE COURT: Despite the fact that Mr. Cole met
24 Mr. Wright because he claims he sold Mr. Wright marijuana?

25 MR. DAMM: Your Honor, I'm not suggesting that

1 because Mr. Cole was selling marijuana that -- that that
2 somehow disengages Mr. Cole from the influence of Mr. Wright.

3 THE COURT: Agreed. I'm just trying to see how it
4 makes logical sense.

5 MR. DAMM: No, I understand.

6 THE COURT: I don't see how it's inextricably
7 intertwined. But even if it is, I think it stays out under
8 403. I just think it's highly prejudicial. I don't see much,
9 if any, probative value and I think the prejudicial effect
10 substantially outweighs whatever probative value there is to
11 it. Again, the Government said last time, in October, that
12 they weren't going to offer the text messages that referred to
13 doing drugs. I don't know how his testimony is any different
14 than the text messages. The prejudicial effect is still the
15 same. I can understand you're arguing that there is some more
16 probative value now because it shows that Mr. Cole was -- his
17 inhibitions were lowered by the fact that they were doing drugs
18 together, but I just don't see how it's inextricably
19 intertwined with this crime.

20 Keep in mind that intrinsic evidence or inextricably
21 intertwined arises when this other evidence requires it to be
22 admitted for a coherent and comprehensible story of the charged
23 crime and that that story can't be told without mentioning
24 these other offenses. Or, that this other evidence serves as
25 the basis for the criminal charge, or a part of the transaction

1 that serves as the basis. I don't see the smoking marijuana
2 coming in under either of those circumstances.

3 So, the issue of smoking marijuana will not be
4 raised. You will instruct Mr. Cole not to raise that issue.

5 MR. DAMM: Your Honor, there's more than just the
6 marijuana. There were other drugs and I presume that your
7 order would involve any and all drugs, including specifically
8 the marijuana?

9 THE COURT: Has the defendant ever been told that
10 there would be evidence of other drugs?

11 MR. DAMM: Yes.

12 THE COURT: The first time I've heard about Ecstasy
13 was when Ms. Frayn raised it at the hearing on Monday
14 afternoon, or when we discussed it on Monday.

15 MR. DAMM: Your Honor, in an FBI 302 Report of
16 Interview, which apparently occurred on August 4th of 2015, and
17 I believe was turned over to the defendant shortly after that,
18 it indicates -- and I have a copy for the Court -- it indicates
19 on the first page, "In addition, Cole smoked marijuana every
20 day and also intermittently used Ecstasy, Xanax, and codeine."

21 THE COURT: Cole did. He used those.

22 MR. DAMM: Yes.

23 THE COURT: How is that connected to Mr. Wright?

24 MR. DAMM: Because Mr. Wright encouraged and provided
25 these various drugs to Mr. Cole. They used them together prior

1 to the commission of these robberies.

2 THE COURT: Does it say that in the 302?

3 What you just read to me says the 302 says Mr. Cole
4 used drugs.

5 MR. DAMM: That is correct.

6 THE COURT: I haven't heard any connection to
7 Mr. Wright. I've never seen that 302. It wasn't attached to
8 the motion. So I have no idea what you're talking about other
9 than what you're telling me and what you're telling me is
10 there's no connection to Wright.

11 MR. DAMM: Well, Your Honor, I'd have to review
12 the -- the rest of the 302 myself, and I have a copy for the
13 Court.

14 THE COURT: This would have been nice to have been
15 done 30 days before trial instead of at the last minute. It's
16 denied. You can't bring in the evidence of the drugs, under
17 403.

18 Next is, looking at Page 5 of your motion, talking
19 about many of the discussions leading up to the planning and
20 execution of the robberies were made by Wright, Jackson, and
21 Cole riding around in a car smoking marijuana.

22 You can talk about riding around in a car. You can
23 talk about hanging out together, but you're not going to talk
24 about marijuana or other drugs.

25 Next it says, "Cole will testify that Wright and he

1 were smoking marijuana outside of Perreira's apartment.
2 Jackson went in, got a firearm, which he gave to Wright. Cole
3 testified that's the weapon he used and brandished in the first
4 robbery."

5 Did the weapon get from Wright to Cole?

6 MR. DAMM: Did the weapon get from Wright to Cole?

7 THE COURT: I have the weapon in Perreira's
8 apartment. Jackson takes it and gives it to Wright. Is there
9 going to be any testimony that the weapon went from Wright to
10 Cole?

11 MR. DAMM: Absolutely.

12 THE COURT: When?

13 MR. DAMM: Some time before the first robbery.

14 THE COURT: Okay. Who's going to testify to that?

15 MR. DAMM: Mr. Cole.

16 THE COURT: That may be relevant. That may be
17 inextricably intertwined.

18 MR. DAMM: In fact, the testimony will be that
19 Mr. Wright provided each and every weapon for all of the
20 robberies.

21 THE COURT: Okay.

22 Mr. Wright.

23 MR. DAMM: He gave them directly to Mr. Cole and then
24 Mr. Cole gave them back to Mr. Wright.

25 THE COURT: Except for the one that he put in the

1 backpack and threw in Ms. Perreira's car.

2 MR. DAMM: Well, that was the method of getting --

3 THE COURT: So at some point he got it back out of
4 the car and gave it to Wright?

5 MR. DAMM: Correct.

6 THE COURT: Okay. All right.

7 Mr. Wright, let me hear your argument on this one.
8 Why shouldn't this one come in?

9 PRO SE WRIGHT: Um, the Court's indulgence,
10 Your Honor.

11 THE COURT: Certainly.

12 (Discussion at defense table.)

13 PRO SE WRIGHT: Your Honor, I don't see the
14 relevance, but right now, I just want to put on record that
15 none of these statements were said in furtherance of a
16 conspiracy. They actually were made a year later. Now, the
17 FBI report and the reports that Mr. Damm -- the Government is
18 representing was made, was not made in furtherance of a
19 conspiracy. I just wanted to put that on record.

20 THE COURT: And -- and -- and I saw that in your --
21 in the papers that you filed and just so I'm clear for the
22 record. They are sort of two competing issues here. One is,
23 what you're referring to is statements made in furtherance of
24 the conspiracy by a co-conspirator. That's a hearsay exception
25 that would apply if someone were to get on the stand and say

1 Mr. Cole said this. But when Mr. Cole gets on the stand to
2 testify, it's no longer hearsay because he's in court
3 testifying on the record this is what I did, this is what I
4 said. It's no longer an out-of-court statement; it's an
5 in-court statement that you can cross-examine him on. So,
6 that takes it out of the co-conspirator hearsay exception. The
7 issue that I'm dealing with more is in terms of whether this is
8 excluded under Rule of Evidence 404(b). The Government says
9 it's inextricably intertwined, or intrinsic evidence, meaning
10 404(b) doesn't apply; we can bring this in as evidence as part
11 of the crime.

12 So, I get your argument, I understand it but, you're
13 sort of going on an issue that I've moved past. Okay?

14 PRO SE WRIGHT: All right.

15 THE COURT: All right. So I'm going to -- I'm going
16 to at this stage, subject to obviously tying it in and getting
17 the evidence, I'm not going to prohibit Mr. Cole from
18 testifying about this gun getting from Mr. Wright to Mr. Cole,
19 as long as there's credible testimony and barring any other
20 kind of objection, I'm not going to outright prohibit them at
21 this stage on that one.

22 The next item in your Motion in Limine is the -- it's
23 the second Number 2, Paragraph 2 and this says that Wright was
24 the mastermind who guided the conspirators because he had
25 knowledge about planning robberies, because Cole knew that

1 Wright had committed a similar crime previously, spent time in
2 jail for that crime. So the question I have is -- and I
3 mentioned this the other day and I don't recall the answer --
4 how did Cole come by this knowledge? If this is a statement
5 from Wright to Cole, then it's an admission by a party opponent
6 and it seems like it would come in, but if he learned it some
7 other way I've got a hearsay issue. So, explain that one for
8 me.

9 MR. DAMM: I would expect Mr. Cole to indicate that
10 it was Mr. Wright that provided that information --

11 THE COURT: Okay.

12 MR. DAMM: -- information to him.

13 THE COURT: Okay.

14 Mr. Wright, anything on that?

15 PRO SE WRIGHT: I mean, it's at the point now,
16 Your Honor, where they -- where the Government is basically
17 saying Cole could just say anything and say I said anything.
18 I've never told that man that. As far as I -- I realize -- I
19 mean, I remember, it was told to Cole that I -- that I -- that
20 I committed crimes in the past and been in prison.

21 THE COURT: And that's -- that's what we're going to
22 have to find out. It will be up to the jury to judge his
23 credibility. But if he's going to get on the stand and testify
24 that Mr. Wright told me X, Y, and Z, that's a statement by a
25 party opponent so it's not hearsay. It seems to me that it has

1 probative value. There is prejudicial effect to it, but it's
2 not substantially outweighed -- the probative value is not
3 substantially outweighed by the prejudicial effect so it's not
4 barred by 403. It sounds like it won't be hearsay. So,
5 subject to him being able to say this isn't hearsay and explain
6 why, I'm not going to prohibit him from saying that at this
7 point.

8 PRO SE WRIGHT: Your Honor --

9 THE COURT: Yes.

10 PRO SE WRIGHT: -- can I say one more thing?

11 THE COURT: Sure.

12 PRO SE WRIGHT: Doesn't it come into play where you
13 bringing up prior bad acts though?

14 THE COURT: Well . . . that's a 404(b) issue but,
15 again, if it's inextricably intertwined as part of the
16 conspiracy, if it's inextricably intertwined with all of this,
17 then it's -- 404(b) doesn't apply. And the Government's
18 position is that this whole conspiracy occurred. Cole got into
19 it because you allegedly said, "Hey, I've done this before,
20 this is how it works, join my conspiracy, let's start a
21 conspiracy," whatever -- I'm sort of guessing here as what the
22 Government's going to say -- and so this was the genesis, the
23 start of the conspiracy.

24 Mr. Damm, is that -- am I accurately summarizing it?

25 MR. DAMM: Yes.

1 THE COURT: Okay. So that's the -- it's, in my mind,
2 intertwined with the conspiracy charge so it would come in
3 under -- as ex -- as intrinsic evidence. So 404(b) wouldn't
4 apply. Provided the proper foundation and ground work is laid,
5 that would come in.

6 All right. The next one is the attempted robbery of
7 Walgreens. This is Number 3 on Page 5 of Docket 270 where
8 "defendant Wright first tried to get Cole to rob a Walgreens
9 but Cole was too scared to go through with it." I have no
10 context for that so Mr. Damm, help me out here.

11 When did it happen? Where did it happen? How is it
12 related? How is it inextricably intertwined?

13 (Discussion at Government table.)

14 MR. DAMM: Your Honor, the -- the defendant,
15 Mr. Wright, met Mr. Cole in February of 2014. The first
16 jewelry store robbery occurred in April. So it was some time
17 after February and before that April date that the suggestion
18 for the -- the initial robbery at Walgreens occurred,
19 Your Honor.

20 THE COURT: We just don't know when.

21 MR. DAMM: I don't have a precise date.

22 THE COURT: Nobody's asked Mr. Cole that yet?

23 MR. DAMM: I -- I did not and I don't -- I don't have
24 the precise date.

25 THE COURT: Hate to beat a dead horse, but when you

1 prepare late, this is what happens.

2 So, normally what I would do in a situation like this
3 is, I would say, before this can be presented to the jury, I
4 would need to have a hearing outside the presence of the jury
5 to determine whether this is or is not part of the conspiracy,
6 whether it's inextricably intertwined. Because I can't --
7 based on what I have in front of me, I can't say it is. So
8 before you put this in front of the jury, I would have an
9 Evidentiary Hearing outside the presence of the jury. Because
10 this is late, we can do this on Friday, but it's coming off of
11 the Government's time. Tick. Tick. Tick. So it's your
12 choice. If you want to go into this, we'll have an Evidentiary
13 Hearing, but it's counting against the Government's time. So
14 I'll leave you to decide whether you want to do that or not.
15 Because this should have been addressed well before today and
16 it would have been and it wouldn't cut into anybody's time for
17 trial presentation. And it's going to be the same, I think,
18 with regard to the Lee's liquor store robbery because I don't
19 have any time frame or anything else on that. Unless you've
20 got more.

21 MR. DAMM: The Lee's liquor store robbery occurred on
22 . . . April 20 . . . I believe that was April 26th of 2014,
23 Your Honor.

24 THE COURT: Okay.

25 MR. DAMM: So well within the acceptable time frame I

1 would suggest to the Court.

2 THE COURT: Within the on or about range, at least.

3 MR. DAMM: Yes.

4 THE COURT: All right. Tell me about that one.

5 MR. DAMM: Your Honor, this was another robbery that
6 was initiated by Mr. Wright using Mr. Cole as a proxy. And the
7 report was turned over previously in discovery to Mr. Wright,
8 Your Honor.

9 MR. MANINGO: And, Your Honor, Mr. Wright has asked
10 that I respond.

11 THE COURT: Yeah. Hang on a second. Yeah. I'll
12 give you the opportunity.

13 MR. MANINGO: Thank you.

14 THE COURT: Just give me a second. I want to refresh
15 my memory as to what was in the motion.

16 (Brief pause in proceedings.)

17 And you're saying this was 4-26 of '14?

18 MR. DAMM: Yes, Your Honor.

19 THE COURT: So, Count One of the Superseding
20 Indictment says, "Beginning on a date unknown but not later
21 than April 28th." So this would have been two days before
22 that.

23 MR. DAMM: Correct, Your Honor.

24 THE COURT: Okay. Mr. Wright? Mr. Maningo?

25 MR. MANINGO: Thank you, Your Honor.

1 And --

2 THE COURT: And just so we're clear. Mr. Maningo is
3 standby counsel. And one function of standby counsel is to
4 assist the Court in the efficient operation of this process.
5 He's not arguing for you. He can be your mouthpiece on certain
6 issues, Mr. Wright, but this is your case to litigate. You've
7 chosen to do that. If you at some point elect to turn it over
8 to Mr. Maningo to run the case, that's your opportunity -- you
9 have that opportunity to do so as well, but . . . I am allowing
10 Mr. Maningo to speak at times because it's more efficient for
11 me to hear from him but, this is your case. And I want it
12 clear.

13 PRO SE WRIGHT: I understand, Your Honor.

14 THE COURT: Okay. All right. So as long as you're
15 feeding him what you want him to say to me and he can say it
16 more coherently and easier and efficiently for you, I'm okay
17 with that, within reason.

18 PRO SE WRIGHT: That's what I'm doing.

19 THE COURT: In front of the jury it's going to be a
20 different issue though. Because you're entitled to make sure
21 the jury knows that you are representing yourself and
22 Mr. Maningo has to take a much greater back seat in front of
23 the jury. Okay?

24 PRO SE WRIGHT: That's understandable.

25 THE COURT: All right. Okay. Good.

1 So, Mr. Maningo.

2 MR. MANINGO: Thank you very much for that record and
3 that's the same thing I've discussed with Mr. Wright. Thank
4 you, Your Honor.

5 THE COURT: You're welcome.

6 MR. MANINGO: I believe we're talking about Items 3
7 and 4 --

8 THE COURT: Yes.

9 MR. MANINGO: -- on Page 5. I just wanted to suggest
10 on behalf of Mr. Wright that I believe Item No. 2, the same
11 argument applies. Just in -- in Item 2, we're talking about
12 general previous robberies wherein Items 3 --

13 THE COURT: You're talking the second Item 2, which
14 is where he's the mastermind about planning the robberies?

15 MR. MANINGO: Oh, I'm sorry. Yes, Your Honor.

16 THE COURT: Okay. The planning of robberies and
17 committed similar crimes previously.

18 MR. MANINGO: Correct.

19 THE COURT: Okay.

20 MR. MANINGO: I think in the second Number 2, Number
21 3, and Number 4, all of those we're talking about the same idea
22 here --

23 THE COURT: Yeah.

24 MR. MANINGO: -- which is prior robberies and one,
25 Mr. Wright wants to argue that it's not inextricably

1 intertwined, that there's no nexus, necessarily, between those.
2 But more importantly, I believe the Government referenced a res
3 gestae argument in terms of 403 where we'd have to complete the
4 story. We don't believe that any of this is necessary to
5 complete any story and that what it is, is just bootstrapping
6 allegations made by a cooperating witness of other robberies in
7 the -- with the intent possibly to taint the jury to think,
8 okay, because he did these other robberies, he probably did the
9 robberies that are in the Indictment. We think it's highly
10 prejudicial and far more prejudicial than probative and that
11 the second Number 2, Number 3, and Number 4 should all be
12 excluded.

13 THE COURT: And -- and to a limited degree I agree
14 with Mr. Wright, that it is highly prejudicial. This is highly
15 prejudicial stuff. Under Rule 403 what I have to balance is
16 does the prejudicial effect substantially outweigh the
17 probative value that it has. I do see, in a vacuum, some
18 probative value here. If -- and I'm trying to read into the
19 motion -- if the idea is Cole's story's going to be I met
20 Wright, he said I've been doing this all along, join my
21 conspiracy, join my gang, let's get together, I'll show you how
22 to do all this kind of stuff, I've robbed, I've done it before,
23 yeah, I spent some time in jail but, it's worth it, da, da, da,
24 da, da, if that's -- and that is what creates his joining a
25 conspiracy, there's probative value there I see. I don't know

1 if that's true or not. I don't know if that's what his story's
2 going to be. I'm trying to infer from this motion that that's
3 in a sense what's going to be argued. If that's the case,
4 there is probative value under the 403 analysis.

5 Under the intrinsically intertwined -- inextricably
6 intertwined, or also known as intrinsic evidence, 404(b)
7 wouldn't apply if it constitutes that and the question I have
8 is, is that part of the same transaction that forms the crime
9 charged or is it needed to tell the jury a complete and
10 comprehensive story. It sounds, on the liquor store robbery,
11 like it could be. I still want to think about that one for
12 awhile. I have a little more information about that to help me
13 make that determination. With regard to the Walgreens, I don't
14 have a date, I don't see how it's tied in. So it's -- I can't
15 say yes, you can go into Walgreens unless I get more
16 information that we would conduct an out-of-court hearing --
17 out-of-jury presence hearing on.

18 So, with regard to Number 3 on the Walgreens, the
19 answer is as of now, you can't go into that.

20 On Number 4 regarding Lee's liquor store, I want to
21 think about that some more. If there's a 302 or some piece of
22 information that you've disclosed on that that would help me
23 understand that a little better, I'd be happy to take a look at
24 that before I render a decision. But, where I'm at is, on
25 Lee's liquor, I'm either going to allow it, if I can get to a

1 comfort level that it's not a 403 problem and that it's
2 inextricably intertwined. If I can't get to that level, then
3 I'm going treat it like Walgreens and say we're going to have
4 to have an Evidentiary Hearing on that. So let me -- I'm going
5 to think about that; I'm not going to rule today. But if
6 you've got something to take a look at, I'll be happy to look
7 at that to help me understand that.

8 MR. DAMM: Your Honor, I have the FBI 302 that I
9 referred to earlier and I have just a . . . a portion of the
10 Lee's liquor crime report and I'd tender those to the Court at
11 this time if I might.

12 THE COURT: That would be -- that would be helpful.
13 Thank you.

14 And that's been produced to Mr. Wright, before.

15 MR. DAMM: Yes, they're -- I can give him the bates
16 numbers. In fact, I'll just give him an extra copy right now,
17 Your Honor.

18 PRO SE WRIGHT: And, Your Honor . . .

19 THE COURT: Yes, Mr. Wright.

20 PRO SE WRIGHT: I want to add, if it's going to be an
21 Evidentiary Hearing on what the -- the Lee's liquor?

22 MR. MANINGO: No, the Walgreens.

23 PRO SE WRIGHT: On the Walgreens, I ask that the same
24 hearing is held on the Lee's liquor.

25 THE COURT: I'm sorry, I didn't hear you.

1 PRO SE WRIGHT: I said I ask if there's going to be a
2 hearing held on the Walgreens robbery, then I would ask the
3 same hearing held on the Lee's liquor.

4 THE COURT: If I get to that point then we may have
5 to do both, yeah. I suspect the Government's not -- you can
6 approach. I suspect the Government's not going to want to take
7 the time to do the Evidentiary Hearing but, it's their case to
8 litigate so we'll have to see.

9 And is this a copy I can keep or do you need this
10 back?

11 MR. DAMM: No, that's your copy, Your Honor.

12 THE COURT: Thank you. Thank you.

13 With regard to Number 5 on the Motion in Limine, that
14 Mr. Wright was engaging in pimp behavior, I've already ruled
15 that's out unless the Government wants to take -- convince me
16 otherwise. I've ruled that out last October. And I don't
17 think my mind has changed any but if you want to offer anything
18 new, I'll listen to you at this time and the same with Number 6
19 about Perreira engaging in prostitution.

20 MR. DAMM: No objection, Your Honor.

21 THE COURT: All right.

22 The last one is 7, that Wright made statements to
23 Cole that Wright had obtained numerous firearms since getting
24 out of prison, that he cannot go very long without possessing
25 firearms.

1 Since the case -- the Government has now dropped the
2 Felon in Possession of a Firearm charge, tell me how this is
3 still inextricably intertwined to the rest of the case.

4 MR. DAMM: Your Honor, that information goes along
5 hand in hand with Item No. 2, that the firearms were an
6 integral part of the robberies in this case. There were
7 firearms used in each of the three robberies and they were
8 provided to Mr. Cole -- provided to Mr. Cole by Mr. Wright
9 specifically and this is just . . . these were further
10 conversations between Mr. Cole and Mr. Wright in the course and
11 in furtherance of the conspiracy whereby Mr. Wright was
12 expressing his interest in always being in possession of a
13 firearm and providing a firearm to Mr. Cole in order to perfect
14 the robberies of the three jewelry stores in this case,
15 Your Honor.

16 THE COURT: I -- I have . . . I don't have a problem
17 with the evidence coming in if Cole's going to testify that
18 Wright gave Cole the gun, guns plural. Which is why I was okay
19 with it under Number 2. If you tie the gun going from the hand
20 of Wright to the hand of Cole, you know -- possession I should
21 say, not hand necessarily but -- but this goes beyond that,
22 where Wright's saying I have lots of firearms, I can't go long
23 without a firearm. I just -- I don't see how it's inextricably
24 intertwined. I don't see how you have to have this to tell the
25 jury a comprehensive and complete story of the conspiracy. And

1 I find it of very little probative value on the conspiracy and
2 robbery charges now that the felon in possession has been
3 dropped and I see a very prejudicial effect. So I'm going to
4 rule it out under both, that it's not inextricably intertwined
5 and I have a problem with it under 403.

6 I will allow you -- like I said though, you can get
7 evidence in, if it's credible and offerable, that Wright gave
8 him the firearms that were used in the robberies. That's tied
9 all together. But this statement I just find not to be
10 inextricably intertwined and barred by 403. So 7's out.

11 Those were the items mentioned in the Motion in
12 Limine regarding statements by Cole.

13 The motion regarding text messages --

14 MR. DAMM: Your Honor, before we move to the text
15 messages --

16 THE COURT: Sure. Yeah.

17 MR. DAMM: -- can I just make one request to the
18 Court.

19 THE COURT: Um-hmm.

20 MR. DAMM: Before Mr. Cole testifies, if we could
21 have the Court admonish him specifically with respect to the
22 drugs, and I suppose we ought to admonish him with respect to
23 the . . . the information about the firearms, Mr. Wright always
24 wanting to be in possession of a firearm. If we could just
25 admonish him -- the Court could admonish him outside the

1 presence of the jury, I would appreciate that procedure of --

2 THE COURT: If the -- if there's an appropriate way
3 and time to do that. What I don't want to do is have him take
4 the stand and then I say, "Jury, excuse yourself for a second,"
5 I got to move them out, I give him, and we then bring them in.
6 If we can find the appropriate time to make that admonishment,
7 I think that makes sense.

8 MR. DAMM: And -- and -- that's exactly what I would
9 suggest, Your Honor, is that before we bring him in in front of
10 the jury he be admonished.

11 THE COURT: I would expect that the Government would
12 explain that to him as well when you meet with him before he
13 testifies and tell him I've ruled certain ways and . . .
14 You're looking quizzically like that's not going to happen.

15 MR. DAMM: Well . . . he's in custody and . . . we'll
16 have to work out the mechanics of hopefully trying to meet with
17 him between now and tomorrow at 9 o'clock. I . . .

18 THE COURT: I -- I -- I appreciate the difficulty
19 but, keep in mind, this is a witness you're presenting and if
20 he goes off the rails and you haven't taken the appropriate
21 prophylactic effects, you run the risk of me declaring a
22 mistrial and -- I'm not -- I'm not saying I'm going to do it at
23 the drop of a hat obviously but, you're putting this witness
24 on, we've had these issues. I'm presuming you're going to meet
25 with him and explain to him at some point the judge has ruled

1 you can't say this, you can't say that. I'll try to give that
2 admonishment as well, but I want everybody to be clear, if he
3 goes off the rails, I don't want to see the Government throw up
4 its hands and say, "Gee, Judge, we had no idea" because I
5 suspect you would have if you'd have done it ahead of time.

6 Yes, Mr. Damm.

7 MR. DAMM: I appreciate the Court's observations but,
8 with any witness, regardless of the amount of time we've had to
9 spend with that witness, regardless of the admonitions given to
10 that witness by the Government, regardless of the admonitions
11 given to that witness by that witness' attorney, regardless of
12 the admonitions given to that witness by the Court,
13 notwithstanding all of those admonitions, none of the parties
14 involved can guarantee what a witness may see --

15 THE COURT: Of course. I acknowledge that.

16 MR. DAMM: -- and I wouldn't want the Court to infer
17 that simply because a witness says something, that that conduct
18 is attributable to the Government.

19 THE COURT: I'm not saying it is. I didn't -- if
20 I -- if that's what I implied, I meant -- I apologize. That
21 wasn't the intent. My suggestion though was that I would
22 presume the Government is going to meet with him at some point,
23 however brief, before he walks into court to testify and that
24 you would pass on to him the message and the strong admonition
25 yourself that these areas are off limits and Mr. Cole can't say

1 these things. If he does, he runs the risk of being held in
2 contempt.

3 Now, if it appears to me that he's doing it at the
4 Government's bequest, request, or if he's doing this and the
5 Government hadn't properly warned him or admonished him about
6 that, that's a different issue. I expect that's not going to
7 be the case. I expect you'll appropriately warn him, but
8 obviously if I've ordered it out and you've admonished him and
9 I admonished him, if it seems to me he's doing this on his own
10 personal vendetta or something, he runs the risk of contempt.

11 MR. DAMM: And that's fair enough. And in addition,
12 we expect his counsel to meet with him and provide him those
13 same admonitions.

14 THE COURT: There's a woman standing up in the
15 gallery who I don't know and I don't know why she's here.

16 MS. RASMUSSEN: I represent Mr. --

17 COURT REPORTER: You need to come to a microphone.

18 THE COURT: You need to come to the microphone,
19 ma'am.

20 MS. RASMUSSEN: Thank you, Your Honor.
21 Lisa Rasmussen and I represent Mr. Cole.

22 THE COURT: Okay. Thank you.

23 MS. RASMUSSEN: And I -- I understand that you're
24 making rulings this morning on certain things that are and are
25 not admissible. I, at 9:30, had a hearing in front of

1 Judge Foley and so I left right after you started and I just
2 walked back in the door.

3 THE COURT: Okay.

4 MS. RASMUSSEN: So, I want to be very clear and I'm
5 not going to ask you to repeat, I don't want to waste your
6 time, I'll find out the rulings from them. I will be meeting
7 with my client this afternoon, but I am, of course, very
8 concerned now when you're talking about holding my client in
9 contempt.

10 THE COURT: I -- I appreciate that and I did that for
11 a reason. Because I want everybody to understand -- you don't
12 know the whole history of this case, but . . . I have ruled
13 Mr. Cole can't talk about certain things. There were -- there
14 was apparently some allegations that he may -- was going to
15 testify to that he and Mr. Wright smoked marijuana together,
16 did other drugs together.

17 MS. RASMUSSEN: Got it.

18 THE COURT: I've said that doesn't come in. There's
19 some other issues that I've ruled that they can't -- he can't
20 testify about, for various reasons, 403, et cetera. You're
21 familiar with that. And, so, I'm not suggesting that if he
22 says that and it just comes out accidentally I'm going to hold
23 him in contempt. Obviously though, like I said, if I get the
24 sense that there's some personal vendetta, he's trying to get
25 back at Wright or the Government, or he's doing some

1 shenanigans, he needs to understand that the Court has contempt
2 power if I think he's misbehaving on purpose and causing
3 trouble.

4 MS. RASMUSSEN: Okay.

5 THE COURT: I don't anticipate that's going to be a
6 problem.

7 MS. RASMUSSEN: Okay. I just -- the Court --
8 obviously the Court knows, I do this for a living. I'm
9 normally sitting here. So I understand other bad acts, I know
10 what they are, and I will find out the rulings for them and I
11 will convey them.

12 THE COURT: I appreciate that. Some of them --

13 MS. RASMUSSEN: And I will also be here when he
14 testifies.

15 THE COURT: I appreciate that. Thank you,
16 Ms. Rasmussen.

17 MS. RASMUSSEN: Okay. Thank you.

18 THE COURT: Thank you.

19 All right. So, Mr. Damm, does that address the --
20 we're all clear?

21 MR. DAMM: Yes. Thank you, Your Honor.

22 THE COURT: And if we can find -- let's try and look
23 for the appropriate time, outside the jury's presence when
24 Mr. Cole is here so that I can put on the record and make sure
25 I emphasize to him, you need to behave. Not that he won't, but

1 it always -- I agree with you, it always helps to have an
2 admonition given when there's potential problems that may come
3 up.

4 MR. DAMM: We appreciate the Court's consideration.

5 THE COURT: Thanks for raising that issue.

6 All right. So with regard to the text messages, like
7 I said before, I didn't have the adequate foundation or
8 authentication laid in the motion so I'm not saying that
9 they're automatically coming in. Government will have the
10 opportunity to do that. But it occurred to me that I wanted to
11 kind of give you a warning. This is an issue that I was
12 concerned about and so you can think about ahead of time. And
13 now that Ms. Perreira is testifying, it takes away some of the
14 confrontation clause problems. It takes away some of the
15 hearsay problems. If she testifies. She's on your list. I
16 don't know if she will or won't. But to the extent that the
17 texts -- if you're going to try and get in text messages, some
18 of those I noticed appeared to be in June.

19 Now, the Indictment says that the conspiracy began on
20 a date unknown, but not later than April 28th and continuing
21 through on or about May 20th. We have a jury instruction on
22 "on or about" means a reasonable period of time. So, you know,
23 I'm not going to sit here and rule this date is the cutoff date
24 but, I want you to be aware that the further beyond May 20th we
25 get, the harder -- or the greater burden or the greater

1 relevance and tying into the conspiracy you're going to have to
2 show to make sure it's part of this conspiracy, if you're
3 trying to get it in as a co-conspirator's hearsay statement.
4 And if this -- I think one of them is like June 6th, which is
5 17 days after the conspiracy ended, on or about, and the
6 conspiracy itself lasted apparently 22 days. You're almost
7 saying that the "on or about" is double -- or the same length
8 of time as the conspiracy time. I'm just giving you a
9 heads-up. If you're going to June 6th, you're going to need to
10 really convince me this is part of the conspiracy still so that
11 it's not a hearsay problem. Now maybe this isn't an issue
12 because she's going to -- if she testifies but, I just wanted
13 to preview that issue so that everybody's aware that it's not
14 going to be simply authenticate, everything comes in.
15 Authentication is one thing. There's still a potential hearsay
16 problem that will have to be resolved.

17 Don't need an answer now, I just wanted to put
18 everybody on notice that's a potential problem. So -- and the
19 same thing beforehand. It says a date unknown but not later
20 than April 28th. If you're talking a year before, I'm going to
21 have a hard time seeing how that's part of a conspiracy. Just
22 want everybody aware of that.

23 Do you understand that, Mr. Wright?

24 PRO SE WRIGHT: Yes, Your Honor.

25 THE COURT: All right. Just so we're aware of that.

1 Other than that, I couldn't think of anything else
2 that I felt like I needed to preview on the text issues. I'm
3 going to wait to see if the Government is going to lay the
4 authentication foundation and then we'll go from there how you
5 do that. Okay.

6 Any other issues on the text messages before I move
7 on from there?

8 MR. DAMM: No. Thank you, Your Honor.

9 THE COURT: Okay. Mr. Wright, anything further on
10 the text -- anything additional on the text messages issues we
11 need to address now? I haven't let them put them in. I'm
12 going to see what they can do at trial. You understand that?

13 PRO SE WRIGHT: Yes, Your Honor.

14 THE COURT: All right.

15 PRO SE WRIGHT: Your Honor, at this time may I
16 request that the Court have a hearing outside the presence of
17 the jury. I had filed a motion awhile back regarding
18 801(d)(2)(E) but basically under *Krulewitch* and BOO-JA-LAY,
19 proof that there was a conspiracy because now what we're saying
20 is the bootstrapping rule. Basically since, you know, this
21 man -- one man's saying something, there's no independent
22 evidence to even prove that it was a conspiracy, Your Honor.
23 So I'm asking that a hearing be held on the fact that there is
24 no evidence saying that it was a conspiracy besides Cole's
25 statements.

1 THE COURT: Well . . .

2 PRO SE WRIGHT: I'm being like bootstrapped to his
3 conspiracy and going to trial on it. I don't understand that.

4 THE COURT: I'm sensitive to that argument. Let
5 me -- let me respond this way.

6 This is not an issue that to me should be a surprise
7 to you because you've known all along they're arguing aiding
8 and abetting and conspiracy. So, as I said to the Government,
9 this is something that should have been raised 30 days ago. If
10 you'd have done that, we could have addressed this prior --
11 wait a second. Prior to the jury coming in.

12 Now, if you want to do that, like I offered the
13 Government, we can have that Evidentiary Hearing outside the
14 presence of the Government -- the jury. It would count against
15 their time. If you want me to do this, I'm not going to count
16 that against the Government's time.

17 Now, the second issue on that is -- and it may delay
18 the trial. So you need to think about that also. The bigger
19 issue in my mind is it's not necessarily something that has to
20 be resolved prior to the trial starting. During the trial the
21 Government has the burden of proof to show that the conspiracy
22 existed before it can get in statements of a co-conspirator.
23 If they don't show that, then they don't come in. But that's a
24 hearsay objection. If Mr. Cole gets on the stand and
25 testifies, the hearsay rule doesn't apply because it's now not

1 an out-of-court statement. He's in court, testifying about
2 what he can say and you can cross-examine him. So that hearsay
3 rule doesn't apply to his testimony. If he says something
4 about Perreira told me about Wright saying this, then there's a
5 conspiracy issue that has to be resolved and the Government's
6 going to have to show that Cole was a conspirator, you were a
7 conspirator, and Perreira was a conspirator and that way it's a
8 co-conspirator statement. And the Government will bear the
9 burden on that burden of proof before the statement by Perreira
10 comes in.

11 There's an alternative ground and that is I can let
12 the evidence come in, subject to the Government tying it up
13 that there's a conspiracy later. I'm not inclined to do that
14 the way this case has progressed and the way I'm fearful of
15 this testimony that's all going to come in. No offense to any
16 person or witness. But I'm not inclined to allow that. So as
17 I sit here, the Government's going to have to demonstrate the
18 conspiracy. But I don't think that's going to be an issue
19 because Cole's going to be here and presumably at least
20 Perreira's on the witness list. Her statements too would not
21 be hearsay because they'll be in court. Okay?

22 PRO SE WRIGHT: That's good, Your Honor. That's
23 perfect.

24 THE COURT: So, if you decide you want to have that
25 hearing, let me know -- think about it and let me know before

1 we finish today because that's going to affect how we do
2 things.

3 PRO SE WRIGHT: Okay.

4 THE COURT: Understood? All right.

5 Anything else? Government want to chime in? Any
6 agreement? Objection?

7 MR. POMERANTZ: No, sir.

8 THE COURT: All right. Okay. That dealt with the
9 text messages. Those were the outstanding Motions in Limine.
10 Bear with me for a minute while I get myself
11 organized again.

12 (Brief pause in proceedings.)

13 Now, let's move to the exhibit list. As I mentioned
14 earlier, there was an exhibit list filed Tuesday, another
15 exhibit list filed yesterday. On yesterday's list there are
16 three exhibits that were not on Tuesday's list. More
17 importantly, one exhibit on yesterday's list was not even on
18 the exhibit list that was filed on Monday. I have a problem
19 with that. Specifically, it's Exhibit 5A.1 described as MJ
20 Christensen Boca Park summary surveillance disk 4-29-14. That
21 was not on the list that was provided on Monday.

22 If you intend to still go forward with that exhibit,
23 I need to know why and why it's fair to allow this late --
24 because I didn't give time for you guys to prepare, I gave time
25 for Wright to prepare. In addition, those other two exhibits

1 that were not on the Tuesday list were 18B and C, cartridges --
2 43 cartridges and seven cartridges.

3 PRO SE WRIGHT: Your Honor, at this time I would like
4 to move to strike any exhibits that wasn't presented
5 previously.

6 THE COURT: Okay. Ms. Frayn? Mr. Damm?
7 Mr. Pomerantz?

8 MR. DAMM: Your Honor, with respect to Exhibit 5A, I
9 believe it's 5A.1, 5A.1 is simply a -- a small subset of 5A.

10 THE COURT: Okay.

11 MR. DAMM: As I understand it, 5A is a . . . a . . .
12 well, let me back up.

13 The surveillance cameras at the MJ Christensen
14 jewelry store are captured -- there are a number of
15 surveillance . . . cameras that capture individual scenes.
16 They are all contained within Exhibit 5A. What we did to
17 streamline the process is to develop a short clip, I think it's
18 only like a minute or so, which is contained in Exhibit 5A.1.
19 So it's just a small subset of Exhibit 5A. So we're not adding
20 anything new --

21 THE COURT: Okay.

22 MR. DAMM: -- we're just condensing what had
23 previously been provided to the defendant and previously been
24 contained on our exhibit list.

25 THE COURT: That's what I was getting but I wanted to

1 make sure that was the case. So it's -- so the record's clear,
2 5A.1 is a snippet or clip of the larger 5A?

3 MR. DAMM: Correct.

4 THE COURT: Reduced for efficiency purposes to
5 present?

6 MR. DAMM: Correct.

7 THE COURT: Okay.

8 MR. MANINGO: Your Honor, if we could just ask, has
9 it been modified at all in terms of being enhanced or blown up
10 or different angle or anything like that?

11 MS. FRAYN: Your Honor, I sat with Ms. King when she
12 put that together and what we -- what we did for -- so that it
13 will be clear to the jury, is in between changing camera shots,
14 we put a period of black space so that the jury would know that
15 it was changed. Other than that alteration, nothing was
16 altered.

17 THE COURT: Okay. Thank you.

18 (Discussion at defense table.)

19 THE COURT: And 18B and C, those were not on the --
20 on the -- they were on the original list, but they weren't on
21 the Tuesday list. Was that just an oversight or what's the --

22 MS. FRAYN: No. I don't have the files. Can I look
23 at the Court's -- does the Court have a file stamp copy? We
24 have a draft. There's been so many I just don't -- I think
25 it's just a renumbering issue, not that they weren't on there.

1 May I approach?

2 THE COURT: My -- my clerks went through and tried to
3 match it up and they said this was not on Tuesday's but let me
4 hand it down.

5 Melissa.

6 MS. FRAYN: Thank you.

7 THE COURT: Mr. Wright, with regard to the video
8 summary, any objection --

9 PRO SE WRIGHT: No objection to 5 -- 5A.1.

10 THE COURT: Okay.

11 MS. FRAYN: Your Honor, really what I need is the
12 first version that we --

13 THE COURT: I have the original one. I don't have
14 the Tuesday version with me right now.

15 THE COURT: Okay. So if you want to go back and
16 compare --

17 MS. FRAYN: Okay. Can the -- can we go back -- can I
18 provide an answer to the Court once I can go back and compare,
19 Your Honor?

20 THE COURT: Yeah. We can discuss it tomorrow morning
21 some time during the trial and get that resolved. I'm going to
22 hold off on whether that comes in or not at this stage. Okay.

23 So that's an open issue. Fair enough.

24 MR. DAMM: Your Honor, just for my edification, the
25 Court's concern is that the Court believes that those items

1 were not on any exhibit list?

2 THE COURT: No. No. No. 5A.1 was not on any prior.
3 18B and C were on the original, but they -- on the Monday list,
4 they weren't on the Tuesday list. And they showed up on the
5 Wednesday, but not on the Tuesday. It's the two -- it's the
6 cartridges, 43 cartridges of .38 special and seven cartridges
7 of .45 caliber. We didn't see them on the Tuesday list, but
8 they are on the Wednesday.

9 Check it out and find out. If I'm wrong, if we made
10 a mistake, so be it.

11 MS. FRAYN: It may have just been a mistake that was
12 corrected.

13 THE COURT: Could be. And that's what I'm just
14 trying to figure out.

15 MS. FRAYN: And I would make clear to the Court,
16 these are physical items that were seized from a search that
17 have been disclosed for a very long time to Mr. Wright.

18 THE COURT: Okay. Yeah, I don't anticipate it's
19 prejudicial given the quick time you caught it, but I just
20 wanted to make sure everybody was aware that was the only issue
21 I had. The bigger issue -- question I had was on 5A.1 because
22 it's brand new, but I get that and that makes sense and I'm
23 okay with that.

24 MS. FRAYN: Can I bring something to the Court's
25 attention and to --

1 THE COURT: Please.

2 MS. FRAYN: Because we've -- okay. Wait. There are
3 two issues. There will be, if there has not been already on
4 this version, there are summary -- we did the same thing. I
5 think maybe it is contained in the exhibit list but, to be
6 clear --

7 THE COURT: Okay.

8 MS. FRAYN: -- we made clips, summary clips for each
9 of the three robberies going through the same process; taking
10 the multi-camera disk and then condensing it down to a very
11 short clip with black spaces to indicate where the camera
12 change happened. And so, I believe they are on there. If they
13 are not --

14 THE COURT: Yeah. And just to confirm that. On the
15 original one that was handed to me on Monday, Page 3 references
16 MJ Christensen Eastern summary surveillance disk 5-19-14. So
17 that was on there.

18 MS. FRAYN: And there should be a Jared's one as
19 well, which I think is on there as well.

20 THE COURT: I think that's right, too.

21 MS. FRAYN: Okay.

22 THE COURT: I just wanted to point out this is the
23 only new one. I got the explanation and I'm okay with it.

24 MS. FRAYN: So, there is going to be a similar
25 addition for -- relating to the text messages. And if I can

1 just bring this to the Court's attention.

2 THE COURT: Sure.

3 MS. FRAYN: So, seize a phone. Impound it into
4 evidence. Forensic examiner takes it out of evidence, performs
5 a forensic exam. Creates second piece of evidence being the
6 forensic exam. Okay. That forensic exam is on disk, okay, and
7 is sometimes several thousand pages long. What is relevant, in
8 the Government's belief, is the very few text messages that we
9 are trying to authenticate and admit. Someone is going to --
10 the person who did the forensic exam, we anticipate, is going
11 to be able to say, "Yes, I did this exam and I've looked in
12 here and confirmed that these four pages of text messages are
13 contained within my exam." But we don't want the jury to have
14 to mess with the disk with 4,000 pages and so we're making a
15 23.A1, which is just the three or four pages that would come
16 off that disk.

17 THE COURT: You're doing a -- you're making a new
18 exhibit of the relevant texts --

19 MS. FRAYN: Yes.

20 THE COURT: -- and you're going to exclude all of the
21 irrelevant stuff that was found on the phone?

22 MS. FRAYN: And they're redacting all of the
23 surrounding texts around it. We have done that process. We
24 just didn't get it into the exhibit list. And I think Ms. King
25 got it into the defendant's binders that way --

1 THE COURT: Okay.

2 MS. FRAYN: -- so that they know the relevant pages.

3 THE COURT: Okay.

4 MS. FRAYN: But it's just not in the list yet.

5 THE COURT: I appreciate that.

6 MS. FRAYN: I don't want the Court to be concerned
7 that we were doing something untoward.

8 THE COURT: I appreciate the heads-up. No, thank you
9 for giving me that heads-up. As long as the information has
10 been produced and listed and now you're just sort of distilling
11 it down.

12 MS. FRAYN: And for the record, the Government did,
13 at Mr. Wright's request, provide two sets of what we anticipate
14 our evidence binders tomorrow to be.

15 THE COURT: Okay.

16 MS. FRAYN: And I've told Mr. Maningo if there's any
17 last minute small changes, I will immediately let him know and
18 we anticipate bringing the Court's copies to wherever you
19 direct me to bring them a little bit later this afternoon.

20 THE COURT: I appreciate that. Thank you for that.

21 All right. Let me move on to the next issue and that
22 is now that Ms. Perreira has pleaded to a charge and is no
23 longer part of this trial, I'm going to read to the jury an
24 instruction tomorrow morning. It's pulled off of model --
25 Ninth Circuit Model Jury Instruction 2.14 and it says as

1 follows. I want to give you a heads-up and let me know if
2 there's any problem with this.

3 I'll tell the jury, "For reasons that do not concern
4 you, the case against co-defendant Danielle Perreira is no
5 longer before you. Do not speculate why. This fact should not
6 influence your consideration of the charges against Mr. Wright
7 and you must base your verdicts solely on the evidence against
8 Mr. Wright."

9 That's model rule 2.14 from the Ninth Circuit that
10 I've modified a little bit.

11 Mr. Pomerantz.

12 MR. POMERANTZ: United States thinks that's perfect,
13 Your Honor.

14 THE COURT: Okay. Thank you.

15 Mr. Wright, any problem with that?

16 PRO SE WRIGHT: No, Your Honor.

17 THE COURT: All right. So I'll read that first thing
18 tomorrow morning to the jury so that they understand why
19 Ms. Perreira is no longer here.

20 Last issue I had on my -- well, I shouldn't say
21 that's the last. That's not true.

22 The next issue on my list is the instructions, jury
23 instructions. I have gone through and taken the parties' -- I
24 and my staff have gone through and taken the parties'
25 instructions and coalesced them and combined them and modified

1 them and I've got drafts to hand out. So I'll distribute
2 those. But I want -- I need some clarification from the
3 Government first.

4 The Government's jury instructions don't include an
5 instruction on brandishing. Now, I know there's a -- that's
6 part of the Indictment, is brandishing or using. But there's
7 no instruction on that and so is the Government no longer
8 seeking a brandishing charge or instruction? Is it just
9 possession or use?

10 MR. POMERANTZ: Your Honor, the United States is
11 seeking an instruction on brandishing and with the Court's
12 permission it will provide you with a proposed instruction and
13 we'll copy Mr. Maningo on that. If I may e-mail that to
14 chambers.

15 THE COURT: Okay. That's fine.

16 And what I'm going to do -- my intent, what I'll do
17 is I'll hand out the jury instructions, draft, today, before
18 everybody leaves. That way you've got until tonight, tomorrow,
19 and then typically what I try to do is settle those jury
20 instructions at an appropriate time so you can incorporate them
21 into your closing arguments. So my thinking is then we'll
22 settle these tomorrow afternoon when we're -- near the end of
23 the day. Whenever we send the jury home, we can stick around
24 and resolve any disputes on that.

25 Mr. Damm.

1 MR. DAMM: Your Honor, I -- is the Court presuming
2 that Mr. Wright's not putting on a defense?

3 THE COURT: I'm not making that presumption at all
4 but my thought is that we can get most of these hashed out in
5 that block of time at the end of the day Friday --

6 MR. DAMM: Okay.

7 THE COURT: -- and then if we need to do final
8 tweaking, depending what he puts in. What I don't want to
9 do is --

10 MR. DAMM: I've got you. I understand.

11 THE COURT: Yeah. Yeah. Yeah. I'm anticipating
12 he's going to put a case on and that's his right.

13 MR. DAMM: We'll -- we'll -- we'll be ready with the
14 jury instructions at the conclusion of his case.

15 THE COURT: Yes. Yeah. What I'm trying to avoid is
16 a lengthy delay between the time Mr. Wright finishes his case,
17 the Government puts on any rebuttal case, and then we have to
18 wait several hours or half a day to settle instructions while
19 the jury is cooling their heels or I have to send them home.
20 I'd rather, if we've got a chunk of time tomorrow afternoon and
21 if we don't, if we run late tomorrow afternoon and we don't
22 have time, okay. We'll figure out when to work it in. But I
23 want everybody ready to discuss jury instructions tomorrow late
24 afternoon if we have the time to do that.

25 MR. DAMM: So Mr. Wright would not begin his case

1 until Monday morning?

2 THE COURT: It depends. If the Government rests and
3 we've got time and he's ready to go, we can go into this
4 starting Monday -- we can just start Friday afternoon. Every
5 delay we can avoid is fine. But it seemed to me we've got a
6 gap and we could fill that with instructions if --

7 MR. MANINGO: I was just going to say, Your Honor,
8 because the subpoenas issues with Mr. Wright and all the
9 witnesses contacting my office and us doing the best we
10 could --

11 THE COURT: Yeah.

12 MR. MANINGO: -- we didn't tell any witnesses to come
13 Friday evening.

14 THE COURT: That's fine.

15 MR. MANINGO: Just to let everyone know.

16 THE COURT: Okay. So Mr. Wright will not put on a
17 case Friday afternoon. He may give an opening statement at the
18 end of your case-in-chief if he doesn't do it at the beginning,
19 but once the Government's case is done, if we have a chunk of
20 time tomorrow afternoon, we'll settle jury instructions as best
21 we can depending upon what Mr. Wright does. We'll obviously
22 have to take one in or out if he testifies or doesn't testify
23 that will be resolved at the last minute.

24 So, just at least plan on -- let's plan on settling
25 jury instructions on Friday afternoon. And then so if you can

1 send over a brandishing one at some point, just get it over to
2 us and we'll try and incorporate that in. It won't be in what
3 I'm handing out today but you'll at least have an idea of where
4 we're at.

5 Question -- I'm sorry.

6 (Brief pause in proceedings.)

7 I have a question for the Government before Count
8 No. Three. So on Count No. Three, in the Indictment it says
9 that -- it charges Interference with Commerce by Robbery, that
10 on or about May 8 Mr. Wright unlawfully obstructed, delayed
11 commerce, by robbery, and the top of Page 3, "and that the
12 defendants did unlawfully take and obtain property consisting
13 of jewelry and other property, from the persons of MC and BW,
14 employees of Jared's Galleria of Jewelry" at the Rainbow
15 address against their will. The jury instruction the
16 Government submitted is similar to that and what I'm -- and
17 when I read the statement of the case draft, everybody seemed
18 to be okay with that, but I realize there was a lot going on
19 that morning so maybe it wasn't caught or maybe everything is
20 okay and I just -- but I want to make sure that we're all on
21 the same page about what that charge is. Is the . . . yeah.
22 Because in the Government's proposed Hobbs Act Interference
23 with Commerce by Robbery instruction the first element is that
24 the defendant obtained jewelry and other property from MC and
25 BW without their consent.

1 Is the Government saying that the robbery was of
2 those two individuals, that their property and jewelry were
3 taken against their will, or is it that the Government's saying
4 that the jewelry and other property was taken from Jared's as
5 opposed to from MC and BW? Clarification.

6 MS. FRAYN: Your Honor, the property, the jewelry and
7 the other items belonged to Jared's, but they were obtained by
8 gunpoint from the Jared employees MC and BW.

9 THE COURT: And -- and -- and that's what my clerks
10 explained to me they believed and I was pretty sure that's
11 where you were going.

12 MS. FRAYN: So, yes, they were obtained from those
13 individuals but the property did not belong necessarily to
14 them.

15 THE COURT: Was Jared's -- it was Jared's property
16 taken from the persons of those two employees who were there
17 allegedly at gunpoint.

18 MS. FRAYN: Yes.

19 THE COURT: And -- and I raise this because you'll
20 see in my proposed jury instruction on Page 16, the Hobbs Act,
21 I've copied your language but I'm thinking, so that the jury
22 understands, because I could -- as I was going through it,
23 reading it, boy, you could interpret that a different way, it
24 may be worthwhile saying in the jury instruction the defendant
25 obtained jewelry and other property belonging to Jared's from

1 MC and BW without their consent.

2 Look at that instruction. It's Page 16, the first
3 element of the Hobbs Act. I just want to make sure that the
4 jury will understand and it's clear, that was what I was
5 concerned about when I looked at that last night. So, we can
6 hash that out Friday afternoon, you know, whenever we settle
7 the jury instructions, but I want to make sure that that's
8 clear.

9 MS. FRAYN: Yes, sir.

10 THE COURT: That the robbery is of Jared's. You're
11 not charging him with the MJ Christensen two robberies, you're
12 only charging him with the Jared's.

13 MS. FRAYN: The substantive offense, yes.

14 THE COURT: The substantive, yes.

15 MS. FRAYN: We're not limiting the conspiracy to just
16 that one.

17 THE COURT: No. No. No. No. Not at all. This is
18 just on the Hobbs Act Count Three. But I think for the jury
19 instruction it may be better to clarify that language. I
20 didn't do it yet, but that's something we ought to talk about
21 on Friday.

22 All right. Melissa . . .

23 Ms. Johansen is going to hand out my draft jury
24 instructions and verdict forms so that you all can take a look
25 at those in the next 24 to 36 hours and then we'll talk about

1 them. There should be two for each side.

2 Last item I have is timing now for tomorrow. Jury
3 will be here, we'll start at 9:00 a.m. with opening statements.
4 I'll give a short opening instructions to the jury and then
5 we'll go with openings.

6 How much time does each side think they need for
7 opening statements?

8 MR. POMERANTZ: Approximately 15 minutes, Your Honor.

9 THE COURT: Okay.

10 Mr. Wright, are you at this point thinking you're
11 going to make an opening statement right after the Government
12 does or do you want to reserve your opening statement until
13 after they rest and you start your case-in-chief?

14 (Discussion at defense table).

15 PRO SE WRIGHT: Right after -- right after the
16 Government makes their opening statement, Your Honor.

17 THE COURT: Okay. And how much time do you
18 anticipate needing for your opening statement?

19 PRO SE WRIGHT: Not much longer than the Government,
20 Your Honor. Probably 15 to 30, in between there.

21 THE COURT: All right. I'm going to -- I'm going to
22 . . . let's make it 15. If you were a lawyer, I would probably
23 say you don't need more than 15 minutes to give an opening
24 statement. If it goes a minute or two over, I'm not going to
25 hold you to it but I don't think a 30-minute opening is needed

1 in a case like this. But I'll give you a reasonable period of
2 time. Like I said, again, not casting any aspersions or not
3 suggesting anything is going to happen but, if I feel like
4 you're wasting the Government's time and eating into their
5 clock, I'm going to give them extra time on the back end. So,
6 just make sure that you're streamlined and you're -- let me
7 assure you, I'm not picking on you because you're
8 unrepresented. I say this to almost every attorney that's in
9 here. The trials have to be streamlined. The jury gets upset
10 if they feel like their time's being wasted and you can never
11 predict -- sometimes you can. Usually it's hard to predict who
12 they're going to hold it against if they feel like their time's
13 being wasted. And that means sitting around back in the jury
14 room while we're hashing things out or it means going on and on
15 with direct or cross on stuff that has been rehashed and
16 rehashed or it means wasting time in arguments. So I advise
17 everybody, besides the fact that we're on a short time frame,
18 for the jury purposes, they don't want to waste time. So, if I
19 feel like that's happening, I'm certainly going to add time to
20 the Government's side and make sure that that doesn't happen
21 and that they're not wasting everybody else's time as well.

22 Enough said on that.

23 With regard to -- and I'll be clear. I apologize you
24 were shackled on Monday. I thought I had gotten the word back.
25 That was my fault not to get the Marshal's Office notice for

1 that but, I don't intend to have you shackled tomorrow and
2 people can speak from the podium. You can give openings and
3 closings and cross-exams and directs from the podium. But I
4 don't want anybody approaching a witness with an exhibit. If
5 you need to show an exhibit to a witness, from either side,
6 I'll have my clerk or, Ms. Johansen, somebody will -- just say,
7 "Hey, I've got something to show" and they'll come down and
8 take it and give it to the witness. They should have the
9 exhibit books up here so alls you need to do is refer to
10 exhibit this or that or the other and we'll have the booklets
11 here for them but if there's a new demonstrative exhibit or
12 something you want to point out, we'll do it that way. But you
13 can use the podium, both sides can use the podium for direct
14 and cross and openings and the like. I think it will be a
15 little better for the jury.

16 Anything else we need to cover? I've exhausted my
17 list.

18 MS. FRAYN: Your Honor, if I may.

19 THE COURT: Yes.

20 MS. FRAYN: When we were talking witnesses and
21 witnesses that the defense intended to call, there was a
22 federal agent McPeak that the defendant had subpoenaed and I
23 inquired after that of Mr. McPeak, his availability, and I
24 would advise to the defendant and the Court, Mr. McPeak is out
25 of district working on the Attorney General's security detail

1 and will not be back until the 9th. And he can't -- he cannot
2 leave the security detail at this point.

3 I would note to the Court that -- and the defendant
4 that subpoenaing a federal agent requires certain things to be
5 met so that the requirement is in compliance with *Touhy*
6 provisions. I do not believe that the defendant has met those
7 requirements. I wanted to bring this to the Court's attention
8 because, of course, Agent McPeak does not want to be in
9 violation of a court order.

10 THE COURT: Was he involved in this case? What was
11 his involvement?

12 MS. FRAYN: Well, and if you'll remember, Your Honor,
13 I had previously raised this and said the Court may need to
14 excuse the Government and ask the defendant what his intent was
15 because it seemed, in the pleading papers, that his focus on
16 Agent McPeak was surrounding what testimony was put in the
17 Grand Jury, which the Court has already ruled is not going to
18 be coming into the jury.

19 So, I can tell you that the primary investigating
20 agencies in this matter were Henderson Police Department and
21 Metro Police Department. The FBI adopted the case federally.
22 It was primarily assigned Agent McPeak's responsibility but he
23 was very tangentially involved in any part of active
24 investigation.

25 If -- if the defendant wants to tell the Court or

1 tell us now what he anticipates he wants to ask, I can tell the
2 Court whether Mr. -- whether Agent McPeak can even address
3 that. But, he really wasn't part of the investigation. He
4 wasn't talking to witnesses during the robberies. That was all
5 done at the state level before the case came over federally.

6 THE COURT: And he's not on your witness list?

7 MS. FRAYN: He is not.

8 THE COURT: What did he do once he took over? You
9 said he was tangentially involved. Were his underlings doing
10 it -- are they going to testify it -- was Officer Mahan doing
11 that or what's the --

12 MS. FRAYN: Well, I mean, so once it came federally,
13 Agent McPeak helped gather and funnel discovery to the
14 Government.

15 THE COURT: Okay. He's a coordinator in a sense?

16 MS. FRAYN: He wrote various 302s to document
17 contacts that were made. In fact, he wrote the 302 -- authored
18 the 302 that Mr. Damm handed up to the Court about
19 Mr. Cole's . . . August 4th, 2015, discussion with the
20 Government.

21 He did some investigation for -- at our request, some
22 follow-up, which did not culminate in anything that we believed
23 was relevant or admissible. He began the process of attempting
24 to find Tonya Fred, but Agent Mahan here at counsel table
25 picked that ball up late last Friday and did all of the heavy

1 lifting to actually locate Ms. Fred some time Saturday
2 afternoon.

3 There was -- and I'm just trying to do this off the
4 top of my head, Your Honor.

5 THE COURT: Sure. Understood. That's fine.

6 MS. FRAYN: Clearly I can't tell you each and every
7 thing he did.

8 THE COURT: Understood.

9 MS. FRAYN: I know there was an allegation that
10 Ms. Rasmussen brought to our attention about a disturbance that
11 happened at Mr. Cole's family's rental property in Las Vegas
12 and I know that he did some follow-up investigation into that
13 and -- and we don't believe that there was anything relevant or
14 admissible that came as a result of that portion of the
15 investigation.

16 I also know that he did some follow-up to the Lee's
17 liquor store robbery. But the Government doesn't intend to
18 admit any of that portion of the investigation.

19 I think . . .

20 (Discussion at Government table.)

21 MS. FRAYN: Excuse -- the Court's indulgence,
22 Your Honor.

23 THE COURT: Sure. Sure.

24 (Discussion at Government table.)

25 MS. FRAYN: And Agent Mahan is reminding me that he

1 also was present during the meeting -- we had a telephonic
2 meeting with Donna Cole in anticipation of her testimony and he
3 authored a 302 in connection with that conversation which has
4 been previously produced. But as the Court will note, Ms. Cole
5 is no longer on our witness list.

6 Essentially, Your Honor, he just did the nuts and
7 bolts of shepherding the case around after the investigation
8 was essentially concluded.

9 THE COURT: Okay. Thank you.

10 MR. MANINGO: Thank you, Your Honor.

11 In speaking to Mr. Wright, he subpoenaed Special
12 Agent McPeak. He is a witness that he anticipated --
13 anticipated being here. Mr. Wright's position is that if the
14 Government knew that he wasn't going to be here, that this
15 issue could have been brought up sooner than this morning.

16 I appreciate that the Government's providing us what
17 Special Agent McPeak did. It's quite a bit. It's not
18 just . . . touching the case here and there it sounds like and
19 more to the point, Mr. Wright believes that the special agent
20 was involved with dealings with Mr. Cole, perhaps his proffer,
21 perhaps his statement, and maybe even in preparing some of his
22 testimony.

23 In a nutshell, Your Honor, Mr. Wright believes that
24 he's necessary to be here. He was under subpoena. He should
25 have been here to testify or to respond to the subpoena, or at

1 least Mr. Wright should have been put on notice of his
2 unavailability before today.

3 (Brief pause in proceedings.)

4 THE COURT: Ms. Frayn, when did the Government find
5 out he was no longer available?

6 MS. FRAYN: Your Honor, I knew that he was out of the
7 district when Agent Mahan came into the case. I was under the
8 understanding though that Agent McPeak would be back towards
9 the end of this week. And so . . . that prompted me last night
10 to send an e-mail reminding Agent McPeak that he was under
11 defendant's subpoena and asking rather -- I simply was trying
12 to have a scheduling idea of whether he would be back in town
13 Friday or Monday morning, because I believed that he was on
14 personal leave and would be back at the end of the week was my
15 understanding. And so, I was going to come prepared to advise
16 the Court, well, he will be back Friday afternoon or no, he
17 won't be back until Monday morning and what I got back in
18 response is, "I won't -- I won't be back until the 9th. I am
19 not on personal leave. I am working on the Attorney General's
20 security detail and it is not something I can leave with no
21 notice." And he also, paraphrasing, advises me that the
22 subpoena did not comport with the *Touhy* requirements and if,
23 after inquiry, the defendant wanted to try and enforce the
24 subpoena, he asked, on his behalf, if the Government file a
25 Motion to Quash the subpoena for failure to follow the *Touhy*

1 requirements, which is why I was asking if the Court would
2 inquire with the defendant and we could determine whether he
3 needs to go forward with that because I need to ask leave, if
4 he does, to file a motion to advise the Court that the subpoena
5 may not comply with the *Touhy* requirements and it needs to be
6 quashed.

7 THE COURT: Okay.

8 MR. POMERANTZ: Your Honor, if I may.

9 THE COURT: Sure.

10 MR. POMERANTZ: I've conferred with Special Agent
11 Mahan and Special Agent Mahan's recollection is that Special
12 Agent McPeak informed the prosecutors for the Government when
13 the case was continued the first time several weeks ago that he
14 was going to be unavailable this week of trial.

15 The continuance for the move.

16 THE COURT: Oh, yeah. Yeah. Yeah. Three weeks ago.
17 Understood. Yeah.

18 MR. POMERANTZ: Yes, sir.

19 THE COURT: All right. I do need to hear from
20 Mr. Wright. But before we do that, we're going to take a short
21 break and I probably need to hear from him outside the presence
22 of the Government. So, why don't we take a short five minute
23 break right now and we'll resume with just the defendant and
24 Mr. Maningo and call the Government back in when I finish that
25 with him.

1 Okay?

2 Let's take a break.

3 MR. DAMM: Thank you, Your Honor.

4 THE COURT: Yep.

5 (Recess was taken at 11:04 a.m.)

6 (Proceedings resumed at 11:27 a.m.)

7 COURTROOM ADMINISTRATOR: All rise.

8 THE COURT: Thank you. Please be seated.

9 MR. POMERANTZ: Your Honor, if I could make a
10 representation to the Court.

11 During the break Special Agent Mahan and I had an
12 opportunity to speak to the defendant and Mr. Maningo. The
13 parties believe they have a resolution to this case. We would
14 ask the Court to not grant or withhold taking any action on our
15 Motion to Dismiss Count Five. We contemplate a resolution
16 which the defendant would admit that the gun -- he knowingly
17 possessed the firearm on the date in question. So it would be
18 a plea to Count Five. And we'd like just an hour or so to put
19 together a written Plea Agreement for Your Honor's
20 consideration. But the parties have agreed to terms and I can
21 share those terms with Your Honor if you want or if you'd just
22 wait, that's fine, too.

23 THE COURT: My inclination is to at least get those
24 terms out now so that way if we have a problem at 1 o'clock --
25 I don't want to come back, or whenever we come back and say,

1 wait, that's not the deal I thought I had and we've all lost
2 several hours so -- and each accusing the other of
3 misrepresenting. So at least give me the general terms if you
4 would.

5 MR. POMERANTZ: Yes, Your Honor.

6 The agreement between the parties --

7 THE COURT: And let me ask, is there any need to seal
8 this portion of the record? I wouldn't think so but I don't
9 know that there's any cooperation you're provision you're
10 talking about or --

11 MR. POMERANTZ: I don't -- no. No.

12 THE COURT: Okay. Okay. Good. Fair enough.

13 MR. POMERANTZ: The agreement between the parties --
14 and Mr. Maningo and Mr. Wright can correct me if I'm wrong --
15 is that he would -- the defendant would plead to time served,
16 which is approximately two, two and a half years, there would
17 be no supervision to follow, and we anticipate the defendant
18 making a motion to be released pending sentencing and the
19 Government's agreed to stand silent when that request is made.

20 MR. MANINGO: All of that's accurate, Your Honor.

21 THE COURT: Any -- any fine?

22 MR. POMERANTZ: Not contemplated. Not discussed,
23 Your Honor.

24 THE COURT: So the -- he would plead to Count Five,
25 Felon in Possession of a Firearm. Government and parties would

1 jointly recommend time served with no supervised release. No
2 probation. No fine. And the defendant would move to release
3 pending sentencing when the Government would be silent on that.

4 Mr. Wright, is that your understanding of the terms
5 that the parties have agreed to?

6 PRO SE WRIGHT: Yes, it is, Your Honor.

7 THE COURT: And are there any additional terms you
8 believe the Government has agreed to that you want to tell me
9 right now?

10 PRO SE WRIGHT: No, there's no additional terms,
11 Your Honor.

12 THE COURT: Okay. I will tell the parties, my
13 inclination would be not to release immediately until I can
14 have a report from Pretrial Services. Typically what I do is
15 on a -- on a detention order, or a detention request, I would
16 at least want something from Pretrial telling me we think it's
17 okay or if they think, no, he's a complete danger, we . . .
18 have real strong reservations -- I just want a little
19 information. My inclination is to accept the parties' Plea
20 Agreement and to -- and to grant that, but I just want to check
21 myself to make sure there's nothing out there that suggests
22 that Mr. Wright's going to go out and instantly set off a
23 nuclear bomb or burn down the courthouse or something. I don't
24 think it's going to, I'm being a little facetious but, I always
25 have that precaution because I don't know everything and I

1 would want -- and usually they can do that in an hour or two.
2 We would alert Pretrial Services right now and while I presume
3 you will be in the building, they can presumably run up and
4 meet with you. They could put together some report while -- is
5 there going to be a written Plea Agreement?

6 MR. POMERANTZ: Yes, Your Honor. I would request --
7 I guess that was implicit but I didn't request. The agreement
8 between the parties that the defendant enter his plea, pending
9 the Court's availability, early this afternoon, today.

10 THE COURT: Yeah.

11 MR. POMERANTZ: And so I would just seek about an
12 hour to go draft a written Plea Agreement, to have them sign
13 it, and then come in with, of course --

14 THE COURT: Sure.

15 MR. POMERANTZ: -- understanding the Court's
16 schedule, as early this afternoon as possible.

17 THE COURT: Yeah, we need to do this today because
18 I've got the jury waiting. I'm not going to excuse the jury
19 unless and until I have on the record a Change of Plea Hearing
20 where the defendant has admitted and pled guilty to whatever
21 charge it is and then I would call the jurors and say you don't
22 need to come in tomorrow. But I'd want that sealed up and
23 buttoned up today.

24 MR. POMERANTZ: Thank you, Your Honor.

25 MR. MANINGO: The only thing I would add, Your Honor,

1 is it was -- I recall part of the discussion being whether
2 Mr. Wright is released or not and of course we hope that he is
3 released pending sentencing. We were going to ask the Court,
4 jointly, and I don't know what the Court's powers are, but, for
5 an expedited sentencing date. I think that we discussed that.

6 MR. POMERANTZ: I beg your pardon. That's absolutely
7 right.

8 THE COURT: Okay. And I've done that in the past.
9 I -- I check with Probation to make sure that they've got
10 someone they can put on it right away and do it as quick as
11 possible but it may be -- it may take 30 days, rather than the
12 typical 90. It may take 45. It just depends how buried they
13 are --

14 MR. MANINGO: Of course.

15 THE COURT: -- over there but, we would make the
16 request and see if they can expedite it. What I would
17 typically do is set it right now for 90 days but, ask Probation
18 to expedite and if it's done sooner, we can move the hearing
19 sooner.

20 MR. POMERANTZ: Understood, Your Honor, and there's
21 no objection. We just -- I should put on the record there's no
22 objection on the part of the United States to expedite that.

23 THE COURT: Okay. Thank you for that.

24 MR. MANINGO: And the last thing, Your Honor, and
25 then we'll let Mr. Wright get interviewed, is I have a

1 3 o'clock appointment that will be hard for me to miss.

2 THE COURT: Understood.

3 MR. MANINGO: So I'm hoping we can get it done before
4 that.

5 THE COURT: You are standby counsel so you don't
6 necessarily have to be here, especially if Mr. Wright doesn't
7 want you here, but, I'm happy to get it done ASAP.

8 It's probably helpful, it's up to you, whether or not
9 you want to be present when Pretrial Services interviews him.
10 I hope Ms. Johansen can send an e-mail or a text or something
11 to Pretrial. If not, we'll contact Pretrial right away to say
12 Mr. Wright's in the building, let's get somebody together with
13 him right away over the lunch hour while Mr. Pomerantz and Damm
14 and Ms. Frayn are putting together whatever paper, see if we
15 can get it all wrapped up and I'll -- I'm here all afternoon.
16 We'll get together as soon as we all reasonably can.

17 Should we say 1 o'clock just to have a placeholder?
18 Do you want to say 1:30 to be safer?

19 MR. POMERANTZ: Your Honor, if we could say 1:30 as a
20 placeholder, I think that would give -- certainly give us
21 sufficient time to do it and that would give about two hours to
22 Pretrial, understanding their workload, for them to do what
23 they need to do.

24 THE COURT: Yeah. Let's say 1:30 as a placeholder.
25 If it can't all be done right away, contact my office, get in

1 touch with each other, and we'll move it as we need to.

2 MR. MANINGO: Very good.

3 THE COURT: But the key is to get it done.

4 If we start by 2:15, we should be done by 3 o'clock.

5 We'll make every effort to make that happen.

6 MR. POMERANTZ: Thank you -- thank you, Your Honor.

7 And Mr. Wright, so I'm going to make sure you're
8 clear. You're in agreement with what the Government has put on
9 the record?

10 PRO SE WRIGHT: Yes, I am, Your Honor.

11 THE COURT: Okay. Anybody else need to put anything
12 else on the record right now?

13 MR. POMERANTZ: No, sir.

14 MR. MANINGO: No, sir.

15 THE COURT: All right. So then we're in recess until
16 1:30. I'll expect to see a Plea Agreement and we will get
17 ahold of Pretrial and direct them to -- do the deputies know
18 where he will be held so Pretrial can get down and meet him
19 somewhere?

20 U.S. MARSHAL: Yeah. They'll have access to him.

21 THE COURT: Awesome. Thank you so much.

22 MR. POMERANTZ: Your Honor, as soon as the Plea
23 Agreement's prepared, I will, with the Court's permission,
24 e-mail a copy to Mr. Maningo and to chambers. Is that --

25 THE COURT: Please. That would be helpful. Very

1 helpful. And he's -- and the plea is to Count No. Five --

2 MR. POMERANTZ: Yes, sir.

3 THE COURT: -- Felon in Possession. So we'll use --
4 go off of that.

5 MR. POMERANTZ: So we'll ask you to withhold ruling
6 on our previous Motion to Dismiss it.

7 THE COURT: Are you withdrawing that motion?

8 MR. POMERANTZ: We are withdrawing it.

9 THE COURT: It will be deemed withdrawn.

10 MR. POMERANTZ: Thank you, Your Honor.

11 THE COURT: All right. We'll see you all shortly.

12 Thank you.

13 (Proceedings adjourned at 11:35 a.m.)

14 --oOo--

15 COURT REPORTER'S CERTIFICATE

16

17 I, Heather K. Newman, Official Court Reporter, United
18 States District Court, District of Nevada, Las Vegas, Nevada,
19 do hereby certify that pursuant to Section 753, Title 28,
20 United States Code, the foregoing is a true, complete, and
21 correct transcript of the proceedings had in connection with
22 the above-entitled matter.

23

24 DATED: 5-6-2016

/s/ Heather K. Newman
Heather K. Newman, CCR #774
OFFICIAL FEDERAL REPORTER

25